

2/84

No.24 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER of the Constitution of The Republic of Trinidad and Tobago

B E T W E E N :

THE ATTORNEY GENERAL

First Appellant

- and -

ARNOLD THOMASOS
(Speaker of the House
of Representatives)

Second Appellant

- and -

ERROL MC LEOD

Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the
Appellants

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I N D E X

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD
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IN THE MATTER of the Constitution of
The Republic of Trinidad and Tobago

B E T W E E N:

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(Speaker of the House
of Representatives) Second Appellant

- and -

ERROL MC LEOD Respondent

RECORD OF PROCEEDINGS

No. 1

NOTICE OF MOTION

IN THE HIGH COURT OF JUSTICE No.1501 of 1978

20

IN THE MATTER of the Constitution of the
Republic of Trinidad and Tobago being
the Schedule to the Constitution of the
Republic of Trinidad and Tobago Act, 1976

A N D

30

IN THE MATTER of the Application of
ERROL MC LEOD (a person alleging that
certain provision of Chapter 1 of the
said Constitution have been, are being
or are likely to be contravened in
relation to him) for redress in accordance
with Section 14 of the said Constitution

In the High
Court

No.1
Notice of
Motion

28th April 1978

In the High
Court

No.1
Notice of
Motion

28th April
1978

(continued)

T A K E N O T I C E that the High Court of Justice at the Red House in the City of Port-of-Spain will be moved on Friday the 5th day of May 1978, at the Sitting of the Court at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the above-named applicant, ERROL MC LEOD, for the following relief, that is to say :-

- (1) A Declaration that the Constitution of the Republic of Trinidad and Tobago (Amendment) Act, 1978 is ultra vires the Constitution of the Republic of Trinidad and Tobago (being the Schedule to the Constitution to the Republic of Trinidad and Tobago Act, 1976), null and void and of no effect. 10
- (2) An Order restraining the Respondent, the Honourable C.A.Thomasos, Esquire, T.C., the Speaker of the House of Representatives, from making in relation to the applicant any declaration in pursuance of section 4 of the said Act. 20
- (3) Such further or other ancilliary relief in accordance with Section 14 of the Constitution as may in the premises be appropriate.

And Further TAKE NOTICE that the GROUNDS of this application are as follows :-

- (a) The applicant is a Member of the House of Representatives, having been duly elected thereto at the General Elections held on the 13th September, 1976, as a Candidate of the United Labour Front (a political party founded on the 28th of March, 1976) and having been duly sworn in as such at the First Sitting in the First Session of the First Parliament of the Republic of Trinidad and Tobago held on the 24th of October, 1976. 30 40

The Respondent Thomasos is the Speaker of the House of Representatives having been duly elected as such as a person not being an elected Member thereof pursuant to Section 50(2) of the Constitution at its said First Sitting.

The Respondent, the Attorney General,

is a Member of the Senate.

In the High
Court

- 10 (b) On the 20th of April, 1978, there was published along with the Trinidad and Tobago Gazette Extraordinary (Vol.17 No.119) of that date and as a supplement thereto, inter alia, Act No.15 of 1978, the short title of which is the Constitution of the Republic of Trinidad and Tobago (Amendment) Act, 1978.

No.1
Notice of
Motion
28th April
1978
(continued)

- (c) Section 3 of the said Act purports to amend Section 49(2) of the Constitution and Section 4 of the said Act purports to amend the Constitution as therein respectively set forth.

At the foot of the said Act there appears, inter alia, a Certificate over the signature of the Clerk of the House in the following terms :-

20

"It is hereby certified that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House was supported by the votes of not less than two-thirds of all the members of the House, that is to say by the votes of 27 members of the House."

30

S/ "J.E.Carter
Clerk of the House"

40

- (d) It is contended that the said purported amendments constitute an alteration of the provisions of section 49(1) of the Constitution and that the said alteration has not been effected in accordance with the provisions of section 54(3) of the Constitution in that the Bill for the said Act was not supported at the final vote thereon in the House of Representatives by the votes of three-fourths of all the members of the House.
- (e) Accordingly, it is contended that the applicant, as a citizen of the Republic and as a Member of the House of Representatives elected by his constituents, is entitled to "the protection of the law" guaranteed by sections (4)b and 5(1) of the Constitution and

In the High Court

No.1
Notice of Motion

28th April 1978

(continued)

that the term "law" as so employed covers the provisions of the Constitution including section 54(3) aforesaid.

Dated this 28th day of April, 1978.

S/Len: Oscar Pierre
Applicant's Solicitor

Mr. Lennox Oscar Pierre of No.41 St.Vincent Street, Port-of-Spain, Solicitor for the above-named applicant, whose address for service is the same.

10

The Attorney General,
Attorney's General Office, (AND)
Red House,
Port-of-Spain.

The Honourable
C.A.Thomasos, Esq.
The Speaker,
House of Representatives,
Red House,
Port-of-Spain.

No.2
Affidavit of
Errol McLeod

28th April
1978

No. 2

AFFIDAVIT OF ERROL MCLEOD

IN THE HIGH COURT OF JUSTICE No.1501 of 1978 20

IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago being the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, 1976

A N D

IN THE MATTER of the Application of ERROL MC LEOD (a person alleging that certain provisions of Chapter 1 of the said Constitution have been, are being or are likely to be contravened in relation to him) for redress in accordance with Section 14 of the said Constitution.

30

I, ERROL MC LEOD of No.20, 42nd Street, La Romain in the Ward of Naparima in the Island of Trinidad, Refinery Operator, make oath and say as follows :-

1. I am the applicant herein, a citizen of Trinidad and Tobago and a member of the United Labour Front, a political party founded on the 28th March, 1976, hereinafter referred to as "the Party".

In the High Court

No.2
Affidavit of
Errol McLeod

2. I am, also, a Member of the House of Representatives of Trinidad and Tobago (hereinafter referred to as "the House") having been duly elected thereto as a Candidate of the Party at the General Elections held on the 13th of September, 1976, to represent the Electoral District of Oropouche. I am the same person as Errol McLeod listed in the "Return After Poll" over the signature "A.L. Tyson," "Chief Elections Officer, Elections and Boundaries Commission" (hereinafter referred to as "the Return") being Item 2076 at page 1598 of the Trinidad and Tobago Gazette (Vol.15 No.328) of the 21st of October, 1976.

28th April
1978
(continued)

3. I was duly sworn in as a Member of the House at its First Sitting in the First Session (1976-1977) of the First Parliament of the Republic of Trinidad and Tobago held on the 24th October, 1976, when I was required to make and subscribe, and did make and subscribe, the oath prescribed by Section 57 of the Constitution.

The respondent Thomasos is the Speaker of the House. He was duly elected as such as a person not being an elected Member thereof pursuant to Section 50(2) of the Constitution at its said First Sitting when he, too, was required to make and subscribe, and did make and subscribe, the said prescribed oath.

The respondent, the Attorney General, is the Attorney General of Trinidad and Tobago, is a Member of the Senate of Trinidad and Tobago and would have been required to make and subscribe the prescribed oath before entering upon his responsibilities as such Member.

4. On the 20th of April, 1978, there was published along with the Trinidad and Tobago Gazette Extraordinary (Vol.17 No. 119) of that date and as supplements thereto Act No.15 of 1978, the short title of which is "the Constitution of the Republic of Trinidad and Tobago (Amendment) Act, 1978," and Act No.16 of 1978, the short title of which is the Constitution of the Republic of Trinidad and Tobago (Amendment) (no.2) Act 1970. As appears therefrom, both Acts were passed in the Senate on the

(sic)

In the High Court

No.2
Affidavit of
Errol McLeod

28th April
1978

(continued)

19th April, 1978, but, as also appears therefrom Act No.15 of 1978 was passed in the House on the 15th April, 1978, and Act No.16 of 1978 was passed in the House on the 17th April, 1978.

5. On or about the 11th of April, 1978, I received an Order Paper summoning me to the 21st Sitting of the Second Session of the House appointed for Friday the 14th of April, 1978, at 1.30 p.m. at the Parliament Chamber, Red House, Port-of-Spain, which I attended. All other Members of the House (mentioned in the Return), with the exception of the Member for Naparima, also attended. On my arrival thereat, on learning that a Supplemental Order Paper had been circulated to Members, I requested and received a copy thereof from the Clerk of the House. The paper-writings hereto attached in a bundle marked "E.M.1." are photostatic copies of the said Order Papers. I subsequently learned from my wife that a copy of the said Supplemental Order Paper had been delivered at my home on the morning of the 14th April, 1978, after I had left home.

6. During the course of the said Sitting (which lasted from approximately 1.30 o'clock on the afternoon of Friday 14th April, 1978, to approximately 12.45 o'clock on the morning of Saturday 15th April, 1978) the following events, inter alia, transpired :-

- (a) The Bill mentioned at Item (N) 1 of the Order Paper was withdrawn. 30
- (b) A Motion that the Bill mentioned at Item (L) 1, of the Supplemental Order Paper (hereinafter referred to as "the said Bill") be taken through all its stages was approved.
- (c) On the Motion that the said Bill be "Read a Second Time" being put a protracted debate ensued but the Motion was eventually approved and the said Bill was thereafter committed to "Committee" to be considered "clause by clause". 40
- (d) During the Committee Stage a proposed amendment to the said Bill of which the Member for Couva North had given notice at an earlier Stage was abandoned and the Certificate at the foot of the said Bill as circulated was amended.

(e) A "Division" was called and taken on the "Third (and final) Reading" of the said Bill and the result was that it was passed by the number of votes stated in the Certificate of the Clerk of the House appearing at the foot of Act No.15 of 1978.

In the High Court

No.2
Affidavit of
Errol McLeod

28th April
1978

(continued)

10 7. This deponent at all material times opposed the passing of the said Bill. So too did the Members of Siparia, for Chaguanas, for Caroni East, for Tobago East, for Tobago West, for Arouca and for St. Augustine.

20 8. The bundle hereto attached and marked "E.M.2." is a photostatic copy of the said Bill (with its Explanatory Note) as circulated to Members of the House. One page 2 of the same there appears a correction where the word "three-fourths" appearing in the printed text is underlined and the figure "2/3" is written in at the side in manuscript. The hand writing of the latter figure is that of this deponent as it appears on my original copy. The said correction on my original copy was made by me during the "Committee Stage" when, as deposed aforesaid, it was agreed that the Certificate of the said Bill should be so, and it was so, amended.

30 9. I also received an Order Paper summoning me to the 22nd Sitting of the House appointed for Monday the 17th of April, 1978, at 1.30 p.m., at the Parliament Chamber, Red House, Port-of-Spain, which I attended. All other Members of the House, with the exception of the Member for Naparima and the Member for Tobago East, also attended. At this Sitting the Bill for Act No.16 of 1978 (hereinafter referred to as "the other Bill") formed the main business. The other Bill was taken through all its "Stages" on that day and on a "Division" called and
40 taken on the "Third (and final) Reading" thereof the result was that it was passed (this deponent and the others, excluding the Member for St. Augustine, mentioned in paragraph 7 hereof opposing) by the number of votes stated in the Certificate of the Clerk of the House appearing at the foot of Act No.16 of 1978.

10. At the foot of Act No.15 of 1978 there appears a Certificate over the signature of the Clerk of the House in the following terms :-

50 "It is hereby certified that this Act

In the High
Court

No,2
Affidavit of
Errol McLeod

28th April
1978

(continued)

is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House was supported by the votes of not less than two-thirds of all the members of the House, that is to say by the votes of 27 members of the House."

"S/ J.E.Carter
Clerk of the House."

At the foot of Act No.16 of 1978 there appears a Certificate over the signature of the Clerk of the House in the following terms:- 10

"It is hereby certified that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House was supported by the votes of not less than three-fourths of all the members of the House, that is to say by the votes of 28 members of the House." 20

"S/ J.E.Carter
Clerk of the House."

11. The same twenty-seven Members of the House who at the final vote thereon supported the said Bill supported the other Bill at the final vote thereon except that the Member for St. Augustine supported the other Bill but did not support the said Bill. Further, the substantive provisions of the other Bill, now appearing at Section 2 of Act No.16 of 1978, reproduce in substance the terms of the proposed amendment referred to in paragraph 6 hereof as having been abandoned by the Member of Couva North. In fact, it was the expression on the part of the Member for St. Augustine during the debate aforesaid of opposition to the said Bill that from the point of view of the supporters thereof, dictated the expedient of abandoning the said proposed amendment and re-introducing it separately and subsequently as the other Bill. 30 40

12. The House consists of thirty-seven Members, that is to say, the thirty-six persons (including this deponent) listed in the Return and, in addition, the Speaker, who is named as a respondent herein.

13. Section 3 of Act No.15 of 1978 purports to amend Section 49(2) of the Constitution and Section 4 of the said Act purports to amend the Constitution as therein respectively set forth.

In the High Court

No.2
Affidavit of
Errol McLeod

14. I contend that the said purported amendments constitute an alteration of the provisions of section 49(1) of the Constitution and that the said alteration has not been effected in accordance with the provisions of Section 54(3) of the Constitution in that the said Bill was not supported at the final vote thereon in the House by the votes of not less than three-fourths of all the Members of the House.

28th April
1978

(continued)

10

15. I contend further that, as a citizen of the Republic and as a Member of the House elected (as aforesaid) by my constituents, I am entitled to "the protection of the law" guaranteed, inter alia, by Section 4(b) and 5(1) of the Constitution and that the term "law" as so employed covers the provisions of the Constitution including Section 54(3) aforesaid. And I fear, and allege, that Act No.15 of 1978 constitutes a contravention in relation to me of my rights in the premises guaranteed and secured by Chapter 1 of the Constitution.

20

30

Sworn to at the Registry,)
Red House, St.Vincent)
Street, Port-of-Spain, this) s/ Errol McLeod
28th day of April, 1978)

Before me,
S/ O.Best
Ex Officio Commissioner of Affidavits

Filed on behalf of the applicant herein.

In the
High Court

No. 3

No.3
Affidavit of
Errol McLeod

AFFIDAVIT OF ERROL
MC LEOD

30th June
1978

IN THE HIGH COURT OF JUSTICE No.1501 of 1978

IN THE MATTER of the Constitution of the
Republic of Trinidad and Tobago being the
Schedule to the Constitution of the
Republic of Trinidad and Tobago Act, 1976

A N D

IN THE MATTER of the Application of ERROL 10
MC LEOD (a person alleging that certain
provisions of Chapter 1 of the said
Constitution have been, are being or are
likely to be contravened in relation to
him) for redress in accordance with
section 14 of the said Constitution.

I, ERROL MC LEOD of No.20 42nd Street, La
Romain in the Ward of Naparima in the Island
of Trinidad, Refinery Operator, make oath and
say as follows :- 20

1. On the 28th day of April, 1978, I swore to
an affidavit filed herein in support of the
Notice of Motion filed herein on my behalf and
this affidavit is supplemental thereto.

2. The paper-writings hereto annexed in a
bundle and marked "E.M.3" are photostatic
copies of letters (over the signature of Kelvin
Ramath, the Member for Couva South, purporting
to be acting as General Secretary of the Party)
which I have received through the post. 30

3. I did not appear either on the 5th of May,
1978, or on the 25th of May, 1978, before the
alleged Disciplinary Committee mentioned in the
said letters and I do not know what is the
outcome of the proceedings the alleged Disciplinary
Committee was purporting to take against
me.

4. The said Kelvin Ramnath is not the General
Secretary of the Party and the alleged Disciplinary
Committee is not an organ or a creature 40
of the Party. Neither he nor they have any
authority whatsoever to act in relation to me

as he and they purport to do in and by the said letters.

In the High Court

5. The paper-writings hereto annexed in a bundle and marked "E.M.4" are photostatic copies of a Supplemental Order Paper and its appendix received by me in respect of the 25th Sitting of the House for the 1977-1978 Session of Parliament which Sitting I attended.

No.3
Affidavit of
Errol McLeod

30th June
1978

(continued)

10 6. At the said Sitting the Motion at Item (n) standing in the name of the Attorney General (the first respondent herein) was moved by him consequent upon which the matter of the proposed Amendment was referred in according with Standing Order 89 of the Standing Orders of the House to the Standing Order Committee of the House of which the Respondent Thomasos as Speaker of the House is the Chairman. Standing Order 89 is as follows :-

20 "89.(1) Unless the Speaker shall otherwise direct, not less than twelve days notice of a motion to amend the Standing Orders shall be given, and the notice shall be accompanied by a draft of the proposed amendments.

(2) The motion shall be set down for the earliest convenient sitting after the expiration of the notice.

30 (3) When the motion is reached, the mover shall move the motion and after it has, if necessary, been seconded, the motion shall be referred forthwith, without any question being put thereon, to the Standing Orders Committee, and no further proceedings shall be taken on any such motion until the Committee has reported thereon."

40 7. The Standing Orders Committee has not yet reported to the House on the matter of the proposed Amendment but is likely to do so at any time now and I fear that consequent upon such report and in pursuance of the Standing Orders as amended and of section 4 of Act No.15 of 1978, the said KELVIN RANMATH will, purporting to act as General Secretary of the Party, submit the name of Basdeo Panday (the Member for Couva North) as leader in the House of the Party, that the said Basdeo Panday purporting to act as such leader will inform the Speaker (the Respondent Thomasos) that I have been

In the High Court

No.3
Affidavit of
Errol McLeod

30th June
1978
(continued)

expelled from the Party and that the Speaker will make in relation to me the declaration contemplated by the said section with the consequences flowing therefrom while this Application remains pending and undetermined.

Sworn to at No.19 St.Vincent)
Street, Port-of-Spain, this) S/ Errol McLeod
30th day of June, 1978)

Before me,

S/ Max Lassalle
Commissioner of Affidavits.

10

Filed on behalf of the applicant herein.

No.4
Judge's
Notes
Bernard J.
(Undated)

No. 4
JUDGE'S NOTES
BERNARD J.

IN THE HIGH COURT OF JUSTICE No. 1501 of 1978

IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago being the Schedule to the Constitution of the Republic of Trinidad and Tobago Act 1976

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A N D

IN THE MATTER of the application of ERROL MC LEOD (a person alleging that certain Provisions of Chapter 1 of the said Constitution have been are being or are likely to be contravened in relation to him) for redress in accordance with Section 14 of the Constitution

Before the Honourable Mr. Justice Clinton Bernard

30

Frank Solomon for the Applicant.
Selby Wooding S.C. Russel Martineau with him for the Speaker of the House of Representative
Ivo! Blackman, Deputy Solicitor General for the Attorney General.

S U B M I S S I O N S

In the High
Court

No.4

Judge's Notes
Bernard J.

Undated

(continued)

Solomon :-

Application under Constitution of 1976.

Question is whether Act 15 of 1978 is good law.

Law not properly passed.

Constitution permits of its own amendment
in certain way.

Some provisions entrenched. Section 49(1) is
one of those.

10 49(1) - Tenure for specified period.

49(2) - permitted exceptions.

Section 49(1) vests a right to remain in House
until Parliament ends general right.

S.49 (2) Whittles away the vested right in 49(1)

Submits that 49(1) and (2) provide comprehen-
sive description of person's rights.

Sub-section 2 depends upon s.s.(1). This is so
because 49(1) is entrenched by s.54.

20 Section 54 speaks of altering provisions - not
sections.

Section 49(1) entrenched to extent that Bill
must be supported by 3/4 majority.

Section 46 - Composition of House, Composition
of House is to be 37 3/4 majority 27 - Must have
28 members to constitute majority of 3/4 since
Speaker is not elected member.

What speaker said Bill got is not enough.

30 Act No.15/78 is bad law because it did not
Obtain the requisite majority i.e. 3/4. It is
an Act which purported to amend S.49(1). It
sought to remove member's vested tenure in
S.49(1).

Affidavit of E.McLeod dated 28th April, 1978
and filed 1st May, 1978.

Prescribed oath required its subscriber to
respect the law and constitution.

First Bill for Act 15/78 had provision for 3/4
majority in Certificate.

Bill provided originally for bye-election.

40 Act 16/78 did not require a 3/4 majority. What
required the 3/4 was Act 15/78.

I am challenging constitutionality of Act 15/78.

In the High Court

No.4
Judge's Notes
Bernard J.

Undated
(continued)

Act has reduced vested interest to sit under 49(1)

S.49(2) is EXHAUSTIVE It can only be extended by a 3/4 majority by reason of S.54.

Addition of a provision in S.S.2 has a direct impact on applicant's vested right in subsection (1).

Provision purports to make public law a matter of domestic party affairs.

Act is abuse of constitution. Constitution usurped. 10

Section 54(3) does not mention subsection 2 but only subsection 1 of section 49. But S.54 mentions the provisions.

In a nutshell question to be determined is whether Act 15 alters the provisions of Section 49 subsection 1.

Upon proper construction of Act 15/78 or its Contents - shows that it directed against S.49(1) - Aimed at it. Therefore 3/4 majority required. 20

Act 15/78 - Sections 3, 4.

Act creates a new set of circumstances under which a person's vested rights under subsection 1 of 49 may be taken away.

Construction of Statutes :-

Proviso to sections are not to be read independent of the section itself. Refers - Craies - Statute Law - 5th Edition - p.201 Chap.6 - Construction of Provisos. 30
Submits that S.49 - subsection 2 is a proviso. A proviso to S.49 - subsection 1. Section 49 is one comprehensive code.

Act 15/78 has its impact on S.49 of Constitution. It is directed towards creating new provisos to S.49(1) and as such is required by section 54(3) to be passed by 3/4 majority of House. Such 3/4 is 34 members.

On its face it reflects that it was only passed by 27. Act therefore unconstitutional. 40
Supplemental affidavit of applicant filed on 6th July, 1978.

Part heard - Adjourned to 6.11.78 at 11.30 a.m.

Resumed 6.11.78

Part heard on 4.11.78

Appearance as before
Solomon continuing :-

In the High
Court

No.4
Judge's Notes
Bernard J.

Undated
(continued)

SECTIONS 4 AND 5

Paragraph 15 of applicant's affidavit.
Parliament not supreme. It may not do what it
wishes. It is subject to Constitution - S.1
and 2 of Constitution.

10 Refers: De Smith - New Commonwealth
Constitution - 2 Ed. p.106, 107 (safeguard
against abuse by majorities) 109, 113.
Court empowered to declare unconstitutional and
ultra vires acts of Parliament.

Halsbury - Vol. 7 3 Ed. p.195 Basu 5th Ed.
Vol. 2 - Articles 20 - 117 Indian Constitution
- p.269, 270.
S.14 - Right to access to court.

PROTECTION OF THE LAW - SECTION 4

20 Means citizen can only be made subject to
a denial of his rights only if that law is
valid.

Act 15/78 ultra vires the constitution.
Require 3/4 majority.

Applicant exposed to loss of section in
denial of his right to remain in House for 5
years.

Act 15/78 is in breach of section 54(3).

30 If Act 15/78 was properly passed that is
to say by 2/3 majority I would say applicant's
right in S.4(b) has not been violated "Also"
is conjunctive not disjunctive.

Because of the word "also" in S.49 - s.(2),
Section 49 (2) compendious to Section 49(1).

If I am wrong about 49(2) being compendious
then I rely on section 54. Because 49-s.(1) is
entrenched no collateral alterations could be
made to the section.

Wooding :-

40 Refers to Notice of Motion. Jurisdiction
invoked under S.14 and Rules of the Supreme Court
- Order 55 Rule 1.

In the High Court Note title. Allegation is that fundamental freedom infringed.

No.4 No breach of fundamental right alleged.

Judge's Notes Bernard J. Note grounds (d) and (e) of Notice - and paragraph 15 of affidavit.

Undated In essence applicant alleging non compliance of S.5(1) of Constitution.

(continued) Section 4 can be amended either :-

(a) by section 13. Section 13 applies to an act other than one to amend constitution- or 10

(b) by section 54.

Note S.54(1)
Refers :-

54(1) (2) (3)
54 - s.5 and subsection 6.

Applicant has to show that Act 15/78 is inconsistent with S.4.

Effect of Act 15/78 is to alter provisions of section 4 pro tanto. 20

Since Act passed by requisite majorities, applicant cannot seek protection of court under S.14.

Section 2 gave applicant right to invoke jurisdiction if Act ultra vires Section 54. Different thing for application under S.14. Refers: Gordon v. Ministry of Finance 12 W.I.R. 416, 420-421 (Pure Constitutionality).

Applicant should not have come under section 14 because Act passed in accordance with Constitution which permitted an abridgement of S.4 of constitution. 30

Applicant should have come in the ordinary way relying upon section 2.

Applicant is out of court.

Question is not one of procedural error but of substantive law. No fundamental freedom infringed. Cannot invoke S.14 since constitution permitted abridgement - see S.54(1).

Majorities provided for in S.54 more than the majority provided for in section 13, majorities for section 13 achieved by Act 15/78. 40

Applicant cannot invoke jurisdiction of

court under s.14 in this case.

Part heard adjourned 8.11.78 at 2.15 p.m.

Part heard on 6.11.78

Resume 8.11.78

Appearances as before

Wooding continuing :-

In the High
Court

No.4

Judge's Notes
Bernard J.

Undated

(continued)

Incapacity of applicant to succeed assuming
he is right that Act 15/78 requires 3/4 majority

10 Section 4(b) does not give right to
applicant to have the laws passed in accordance
with their procedural provisions.

Section 4(b) does not mean this. Means
right of individual to "equality before the
law" and equal protection of law.

Refers: Collymore v. A.G. 12 W.I.R. 5:
R. v. Mackay 70 D.L.R. 3D 214, 232, 233, 235.

Submits that with regard to S.4(b) it is
concerned with right of individual to be
protected from discrimination.

20 Section aimed at equality in the administra-
tion and not observance of the law.

Aimed at discriminatory laws which are
unjustifiable.

Act 15/78 does not discriminate against any
party or particular member. It is across the
board legislation. Applies to all members.

30 Section 4(b) - no discrimination in
administration of law or its application. If
it does so and it does so with respect to a
particular class it is justified discrimination.

Application fails on this ground too if
applicant seeks to bring himself under S.14.

ACT 15 OF 1978

Section 49(1) is substantive enactment of
constitution. Meaning and effect clear stands
on its own.

Section 49(2) also substantive enactment
stands on its own. Does not need to be
interpreted by reference to any section.

In the High Court

No.4
Judge's Notes
Bernard J.

Undated
(continued)

Section 49(2) not in form of a proviso or in form of exception.

No language in subsection 2 to show its dependence upon subsection 1.

Section 49(1) based on Westminster model (sic) lays down a point of time when all members must vacate seats. Not dealing with a disability. Not a disqualifying provision. It is legislative description of an inevitable event when all must vacate seats.

Section 49(2) is conceptually different from 49(1). It presupposes continued existence of Parliament but describes list of disparate circumstances by which members may vacate. It is a disqualifying section. Note subsection 2(d) which brings disqualifying provisions of S.48. 10

Section 49(1) is not a disqualifying section.

Section 49(2) not entrenched under S.54. Nor is S.48. 20

Section 49(2) substantive provision - independent of S.49(1). Deals with matters that could occur and consequences thereof during currency of the House.

Section 49(2) is not an exception to the plan of S.49(1) that upon dissolution of House all members vacate their seats.

Act 15/78 passed by 2/3 majority.

ACT 16 OF 1978

Did require 3/4 majority. See sections 54 and 69. 30

Also in subsection (2) word is disjunctive not conjunctive provides for additional circumstances completely independent of circumstances in subsection (1). Word "also" reinforces an interpretation that it is additional to and independent of s.s.1.

No 3/4 majority required. A.G. v. Mootoo C.A. 2/75 (Judgment of Corbin J.A. - p.3 - on the presumption of constitutionality). 40

Adjourned 9/11/78 at 1.45 p.m.

Resumed 9/11/78
Appearances as before
Part heard on 8/11/78
Wooding continuing :-

In the High
Court
No. 4
Judge's Notes
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Undated
(continued)

Lassalle v. A.G. 18 W.I.R. Section 1(a) not circumscribed by discriminatory provisions in preamble but inherent in S.4(b) is a prohibition against discrimination.

MERITS OF APPLICATION

10 S.49(1) and 49(2) are two different things. S.49(1) collective vacation on an inevitable contingency.

S.49(2) - Disparate circumstances under which a member is liable to lose his seat before dissolution.

Must look at each subsection to see its true implications.

20 Subsection (2) not dependent upon subsection (1). Substantive enactment of its own. Test as to proviso :- Craie's Statute Law 7th Ed. p.219- 1873 L.R. 3 C.P.475. Test is assuming the subsection is repealed what effect would this have on the succeeding subsection.

Presumption of constitutionality. Burden of proof upon applicant see Serval - 2 Ed. - P.54 - Vol.1 - Corbin J.A. in Mootoo's case C.A.2/75.

30 Applicant has not brought himself under any of fundamental freedoms particularly as S.4(b) on which he relies has been interpreted in similar jurisdiction that laws are to be administered and applied without arbitrary discrimination and where the interpretation has not been that person has right that law should be passed in accordance with certain procedural provisions. Motion must also fail because on the merits not been demonstrated that Act 15/78 is "an alteration of S.49(1)."

40 Even if there is doubt about it then matter must be resolved in favour of its constitutionality.

Sect. 4(b) is circumscribed by preamble. But the preamble is not exhaustive. Section 4(b) aimed at unjustified discrimination. Aimed at equal protection of the laws. Refers:

In the High Court

Servai - 1st Edition p.188, p.9.3 - p.193 - para.910.

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Judge's Notes
Bernard J.

Part heard - Adjourned to Friday 10/11/78 at 11 a.m.

Undated
(continued)

Part heard on 9/11/78

Appearances as before

Blackman :-

Refers to :-

(a) N/M - para. (3) d and (3) e.

(b) Affidavit of 28.4.78 - Paras.14 and 15 application based on two grounds and possibly a third.

10

First Ground :-

That applicant's rights under section 4(b) of constitution have been abrogated or infringed by Act 15/78 because Act did not comply with S.5 - section 1 of constitution.

Second Ground :-

That Act 15/78 having been passed by 2/3 majority instead of a 3/4 majority as necessary to amend S.49(1) of the constitution violated applicant's rights under S.4(b) and S.5(1) of constitution.

20

Possible Third Ground :-

That Act 15/78 being an alteration of S.49 (1) of constitution was not passed under S.54(3) of constitution i.e. by 3/4 majority was for that reason void.

As to First Ground :

If applicant's motion properly mounted on a breach of 4(b) and 5(1) application would be properly brought under S.14. Application fails because S.5(1) has been complied with. S.5 recognises that legislation can abrogate these fundamental rights provided it follows the procedures in Chapter 1 or S.54.

30

In this case procedure was section 54 2(a). Parliament followed the procedure in S.54 (2) (a).

Act 15/78 complies with requirements of S.54 - subsection 2(a).

40

Section 54 - subsection 2 of constitution is an entrenched provision.

In the High Court

Majority required under S.54 - subsections 2 and 3 is greater than majority required under section 13.

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Bernard J.

Undated

Once rights are abridged under section 54 (2)(a) a party affected cannot succeed in an application under section 14.

(continued)

10

Act 15/78 would survive any inroads if contention of applicant is that his fundamental rights have been infringed.

Section 54 is concerned with an alteration of the constitution.

Section 13 however does not deal with an alteration per se of the constitution but ordinary legislation e.g. I.R.A.

This is distinction between the two sections. This is the whole legislative plan.

20

Act 15/78 is an Act to amend the constitution. This complies with S.54 - subsection 5 of constitution.

Section 54 recognises supremacy of Parliament to amend in a particular manner but without regard to the court's supervisory jurisdiction as in case of an application under S.14 where ordinary legislation impinges on a person's fundamental rights under Ch.1.

As to Second Ground :-

30

If Act void because it was not passed by 3/4 majority no question of fundamental rights would be involved at all.

Fact that Act required 3/4 majority does not give applicant the right to invoke jurisdiction of court under S.14.

Refers :-

40

Order 5 of the Rules of the Supreme Court 1975 - Jaundoo v. A.G.16 W.I.R. 141 at 146. Assuming that applicant has successfully demonstrated that Act required 3/4 majority applicant is out of court as he should have come under O.5 i.e. by Writ or Originating Summons and not by Special procedure under O.55.

In the High Court

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Judge's Notes
Bernard J.

Undated
(continued)

Court refers to :

Order 2 of the Rules of the Supreme Court
Blackman continuing in answer to Court -
Wording of O.5 is emphatic "if but only if."

Non compliance with O.5 is such a non
compliance as goes to the root. Cannot be
cured by an amendment.

Even if Act is not passed in accordance
with 3/4 majority the procedure was wrong.
Application must also fail on this ground.

10

Merits - whether Act is void.

Act 15/78 is not an amendment of section
49 subsection 1.

Act 15/78 is not a proviso to S.49(1).

Act 15/78 is an amendment of S.49(2).
Was properly passed as a result of having been
passed by 2/3 majority.

Refers :

Craie's Statute Law - 5th Edition - p.201-
202. Cases in Craie's at page 202-2-3. Ex parte
Partington 18446 Q.B. 649 at 653.

20

All cases on these pages in Craie's showed
expression used was "provided that" they
followed the substantive provisions in those
terms strong presumption against a construction
as to a proviso if expression "provided that"
or similar words do not follow the previous
section.

Refers :

Russell on Legislative Drafting - 4th Ed.
p.103 - Correct use of proviso. Concedes that
presumption is not irrebuttable Associates
himself with and adopts Wooding's submissions
against the argument that the subsection is a
proviso.

20

Section 49(2) is not a proviso provision.
It is a substantive and independent section.
Stands on its own, just as 49(1) stands on its
own.

PRESUMPTION OF CONSTITUTIONALITY

In the High Court

Refers :

Shell Co. of Australia v. Federal Commissioners of Taxation 1931 A.C.270 at 298 (Proof beyond reasonable doubt).

Adopts Wooding's arguments on this.

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Undated

(continued)

Part heard - adjourned 13/11/78 at

Court rises at 2.10 p.m.

Part heard on 10/11/78

10

Resumed 13/11/78

Appearances as before

Solomon seeks adjournment. He now states that he will be prepared to remain until the Attorney General completes his submissions after which he proposes to ask the Court that he be not called upon today owing to the later of the day.

Blackman continuing :-

Act 15/78 -

20

Section 49(1) is conceptually different from S.49(2).

Section 49(1) is intended to forestall any member of Parliament from remaining in Parliament after dissolution.

30

Intent and purport of S.49(1) is to prevent a circumstance such as occurred between 1640-1660 in England where Long Parliament did not come to an end until members were forcibly ejected therefrom - See Anecdotal History of British Parliament - Jennings 3 Ed. p.6. Solomon seeks leave to withdraw at this stage. Leave is granted.

Section 49(1) meant to prevent the incidents of the Long Parliament. Intent and purport of S.49(2) is different from S.49(1) in that it merely outlines certain circumstances the happening of which may cause a member whom the particular circumstance fits to vacate his seat.

40

Section 49(2) deals with individual members. Section 49(1) is concerned with the collective body of members.

In the High Court

No.4

Judge's Notes
Bernard J.

Undated

(continued)

Section 49(1) and 49(2) are separate and distinct enactments. As to presumption of constitutionality see also :-

A.G. v. Mootoo C. App.2/75 - Judgment of Hyatali C.J.

Basu 6th Edition - p.475.

Very strong presumption that Act of Parliament is constitutionally valid.

Any doubt about constitutionality of legislation, it must be resolved in favour of the validity and not invalidity of the legislation. 10

EQUALITY BEFORE THE LAW AND
PROTECTION OF THE LAW
SECTION 4(b)

1. Adopt Wooding's interpretation of S.4(b).
2. Section is meant to protect a citizen against discrimination.

Act 15/78 is not a discriminatory piece of legislation. Act applies to all members irrespective of his class, race, creed, colour, social position etc. No classification in the Act with which one could begin to say that Act is discriminatory. 20

Refers :-

Basu's Commentary on Constitution of India - 5th Ed. Vol.1 - p.287 - Article 14 - p.444.

"Equal protection means the right to equal treatment in similar circumstances both in privileges conferred and liabilities imposed by the Law" - Basu - p.444. 30

American Constitution - 14th - Amendment - see Tarnapolsky - 2nd Ed. 359 Reid v. Reid 404 U.S. Reports p.71 at 75.

Act 15/78 does not relate to any classes of persons. It is across the board legislation. Act cannot therefore be classified as discriminatory legislation or that there is discrimination in its application. No complaint can therefore, be made under section 4(b). 40

Adjourned to 14/11/78 at 1.00 p.m.

Resumed 14/11/78

Part heard on 13/11/78

Appearances as before

Solomon in reply :-

In the High Court

No.4

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Undated

(continued)

10 McKay's case - Judgment issuing from District Court of Edmonton, Alberta, Ratio decidendi of McKay's case does not deal with the interpretation of phrase "protection of the law". Deals only with phrase "equality before the law." Further, Stephenson's judgment with respect to phrase "protection of the law" was expressly obiter - see p.235 of Stephenson's Judgment - 70 D.L.R. (3) 1977. At 236 he stated it was not necessary to deal with issue relating "to protection of the law." Note structure of Court Section 4(b) incorporates two rights. They are distinct and separate rights although situation could arise where both may be violated. But rights are not co-terminus. One can stand by itself without the other.

20 Note - decided cases between the 1962 and 1976 constitution and also Report of the Wooding Commission on Constitution.

Refers to :-

1. Draft Constitution in 1974 of Wooding Commission.
2. Jamaica Constitution 1962 - Ch.3 - Fundamental Rights - Section 13 26 - Marginal Notes.

30 Jamaica Constitution supports proposition that protection of law is a right independent of right to equality before the law.

My stand is that S.4(b) meant that applicant had the right to have Act 15/78 passed in accordance with the legislative prescriptions of S.54(3). If not having been so passed therefore applicants right in S.4(b) was infringed.

40 Act 15/78 is unconstitutional and void. Compare Constitution of Trinidad 1962 and Jamaica Constitution 1962.

Refers :-

De Freitas v. Benny 1955 3 W.L.R. at 390, 392

Bazie v. A.G. 18 W.I.R.

In the High Court

No.4
Judge's Notes
Bernard J.

Undated
(continued)

(See Fraser's judgment) where he has isolated protection of the law from equality of the law.

Adjourned to 17/11/78

Solomon not certain to be available on Wednesday or Thursday because of other commitments in Court.

Resumed 17/11/78

Appearances as before

Part heard on 14/11/78

10

Solomon continues :-

1. "Protection of the law" considered in Bazie's case by Court of Appeal. Court of Appeal put its interpretation point.
2. Meaning of "protection of the law" construed in Bazie's case.
3. Fraser's dictum in Bazie's case shows that "equality before the law" and "protection of the law" are disjunctive.
4. Phillips J.A. in Bazie's case - P.123 (Letter E). 20
5. McShine J.A. in Bazie' case - P.119 (Letter H).

Jamaica Constitution - with Trinidad and Tobago. It is with two rights. In Jamaica they are distinct.

See also Judgments in Bazie' case where right to protection of the law was interpreted as a right distinct from the right to equality before the law.

30

Refers :

Craie's - 5th Edition p.132-133.

Bazie's Case supra

De Freitas v. Benny supra

From the moment Court of Appeal gave its judicial interpretation of phrase "protection of law" it became part of Common Law of country and since it was re-enacted in 1976 Constitution presumption is that Legislature Law adopted and accepted the judicial construction. See Craie's

40

5th Ed. p.132-133.

In the High
Court

CENTRAL ISSUE

No.4

Judge's Notes
Bernard J.

Undated

(continued)

1. Security of tenure in Parliament.
2. Constitution provides for security of tenure of office.
3. If Wooding right then security of tenure of office is not secured by section 49(1).

Stockdale v. Hansard - 1837 - C & B
731; 3
State Trials N.S. 725.
4. Constitution - Section 39, 43, 68 Refers :-

Shorter English Dictionary - 3 Ed. -
Second Volume - p.2446 - "Vacate" -
meaning of.

10

MARGINAL NOTES

5. Regard should be paid to marginal notes in construing S.49(1).

Refers :-

- (i) Craie's - 5 Ed. p.183.
 - (ii) Interpretation Act - No.2 of 1962 -
Section 10.
6. Construction should not be on the rigid rules applicable to ordinary statutes. Construction should be more flexible.

20

The Act enacts the Schedule Constitution which is Schedule to the Act gets it force from the Act. Constitution is not part of the Act i.e. No.4 of 76. In any event for the purposes of construction it should be treated as an enhanced document.

30

Marginal Notes in the Constitution are entitled to a treatment by the Court which gives them more importance than a Court would be inclined to give to an ordinary Act of Parliament.

Refers :-

Maxwell - 11 Ed. p.42

Re Working U.C.

(Basingstone Act) 1911-1914 1 Ch.300

In the High Court

No.4
Judge's Notes
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Undated
(continued)

Marginal Notes in Constitution are part of the Constitution. They have statutory force. Act and Constitution are two separate documents.

Refers :-

Interpretation Act - No.2 of 1962 -
Section 3(1)

Contrary intention appears in Act 4/76 -
S.2 (Constitution) under S.31.

PRESUMPTION OF CONSTITUTION

Presumption of Constitutionality does not apply here. 10

This is not a legal Act of Parliament. It is no Act at all.

Even if Court finds it applies proposition should be rejected as a proposition of law.

Statutes to be presumed as not to derogate from the rights of the subject.

Martineau with leave of Court -

On the cases and Jamaica Constitution referred to by Solomon as well as marginal notes: 20

(a) Jamaica Constitution :
Trinidad's Constitution different from that of Jamaica.

(b) As to Marginal Notes -

Refers :-

D.P.P. v. Schildekamp 1969 3 A.E.R.1640
at 1641, 1650, 1655, 1657.

Craie's Statute - 7th Ed. p.507.

(c) Bazie's Case: Court was dealing with fundamental justice. That is ratio of the case. Fraser's statements were obiter. 30

(d) De Freitas Case was not concerned with issue in this case.

Blackman :-

1. Adopts Martineau's submissions.
2. Fundamental Rights provision taken

- wholesale from Canadian Bill of Rights. In the High Court
3. Jamaica fundamental rights provisions not the same as those as Canadian Bill of Rights. No.4 Judge's Notes Bernard J.
 4. Canadian experience is of assistance. Undated (continued)

Judgment Reserved. Decision next month.

No. 5

JUDGMENT
BERNARD J.

No.5
Judgment
Bernard J.
19th December
1978

10 IN THE HIGH COURT OF JUSTICE No.1501 of 1978

IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago being the Schedule of the Constitution of the Republic of Trinidad and Tobago Act, 1976

A N D

20 IN THE MATTER of the Application of ERROL MC LEOD (a person alleging that certain provisions of Chapter 1 of the said Constitution have been are being or are likely to be contravened in relation to him) for redress in accordance with section 14 of the said Constitution

Before the Honourable Mr. Justice
Clinton Bernard

Frank Solomon for the Applicant.

Selby Wooding S.C. and Russel Martineau for
the Speaker of the House of Representatives.

Ivol Blackman, Deputy Solicitor General for the
Attorney General.

30 The crucial question in this case concerns the constitutional validity of Act No.15 of 1978 (hereinafter called "the Amendment Act"). The Amendment Act is by its long title entitled "an Act to amend the Constitution of the Republic of Trinidad and Tobago Act 1976." By

In the High Court

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1978

(continued)

its short title it is cited as the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978. The Constitutional validity of its mate (a description solely that of my own and for my own convenience) - Act No.16 of 1978 - which by its long title is entitled "an Act to amend the Constitution of the Republic of Trinidad and Tobago Act, 1976" and which by its short title is cited as "the Constitution of the Republic of Trinidad and Tobago (Amendment) No.2) Act, 1978", has not (sic)10 been impugned in these proceedings. That this is so was not only apparent from the notice of motion and the affidavit filed in support of the application but also this fact was made abundantly clear to me by counsel for the applicant in the course of his submissions.

The Court's supervisory jurisdiction in matters of this kind has been called in aid by one Errol McLeod (hereinafter called "the applicant") under Order 55 of the Rules of the Supreme Court 1975. This Order is the machinery for initiating redress under Section 14 of the Constitution. 20

The material facts are not in dispute and for convenience may hereinafter be briefly set out. The Applicant is a member of the House of Representatives of the First Parliament of the Republic. He was elected to the House following the General Elections held on the 13th September, 1976. In the aforesaid elections he was the successful candidate for the electoral district of Oropouche. He had contested the elections under the banner or auspices of a party called the United Labour Front. He duly attended, in his capacity as a member of the House of Representatives, the first sitting of Parliament on the 24th October, 1976. There he was required to and did make and subscribe the oath as prescribed by section 57 of the Constitution. At the time of his election to Parliament and on taking his seat the period of legislative tenure was, in the first instance, prescribed by the Constitution to be one of five years certain. But by the same Constitution a member's tenure of office could be curtailed in certain specific events before this time. None of the events then dialogued in the Constitution at the time of the applicant's election to the House is here impugned. The applicant as a duly accredited member of the House took part in the business of the House upon taking his seat. Some year 30 40 50

and a half after his election to the House
i.e. April, 1978, Parliament enacted a new
disenabling event to an elected member's
right to sit or to continue to sit in the House.
This disenabling event was enacted under the
provisions of the Amendment Act. By its terms
it purported, inter alia, to declare and make
vacant the seat of a member who having been
a candidate of a party and who having been
elected to the House of Representatives later
resigned from or was expelled by that party.
It is in this context that the applicant has
claimed, inter alia, that as a citizen of the
Republic and as a member of the House elected
by his constituents, he is entitled to "the
protection of the law" guaranteed inter alia
by sections 4(b) and 5(1) of the Constitution;
that "the term 'law' as so employed covers the
provisions of the Constitution including
section 54(3)"; and that he fears and
"alleges that Act No.15 of 1978 (the Amendment
Act) constitutes a contravention in relation
to (him) of (his) rights in the premises
guaranteed and secured by Chapter 1 of the
Constitution." In his notice of motion the
applicant seeks the following relief :-

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1978
(continued)

1. A declaration that the Constitution of the
Republic of Trinidad and Tobago (Amendment)
Act 1978 (the Amendment Act) is ultra vires
the Constitution of the Republic of
Trinidad and Tobago (being the Schedule
to the Constitution of the Republic of
Trinidad and Tobago Act, 1976), null and
void and of no effect.
2. An Order restraining the Respondent, the
Honourable C.A.Thomasos, Esquire, T.C.,
the Speaker of the House of Representatives,
from making in relation to the applicant
any declaration in pursuance of section 4
of the said Act (the Amendment Act).
3. Such further or other ancillary relief
in accordance with section 14 of the
Constitution as may in the premises be
appropriate.

The grounds of the application were, inter
alia, and so far as material as follows :-

- (a)
- (b)

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Court

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19th December
1978

(continued)

(c) Section 3 of the Act (the Amendment Act) purports to amend Section 49(2) of the Constitution and Section 4 of the Act (the Amendment Act) purports to amend the Constitution as therein respectively set forth. At the foot of the said Act (the Amendment Act) there appears a certificate over the signature of the Clerk of the House in the following terms :- 10

"It is hereby certified that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House was supported by the vote of not less than two thirds of all the members of the House that is to say by the votes of 27 members of the House."

"J.E.Carter Clerk of the House." 20

(d) It is contended that the said purported amendments constitute an alteration of the provisions of section 49(1) of the Constitution and that the said alteration has not been affected in accordance with the provisions of section 54(3) of the Constitution in that the Bill for the said Act was not supported at the final vote thereon in the House of Representatives by the votes of three fourths of all the members of that House. 30

(e) Accordingly, it is contended that the applicant as a citizen of the Republic and as a member of the House of Representatives elected by his constituents is entitled to "the protection of the law" guaranteed by sections 4(b) and 5(1) of the Constitution and that the term "law" as so employed covers the provisions of the Constitution including section 54(3) aforesaid. 40

It should here be noted that the applicant has founded his application upon an alleged breach of a specific provision of the Fundamental Rights provisions of Chapter 1 of the Constitution and as such, has founded his application for redress under Section 14 thereof. The Chapter in question - sections 4-14 - deals with 50

10 the recognition of certain fundamental human
rights and freedoms which the Chapter presumes
to have existed and guarantees their continua-
tion in the democratic society of the Republic
of Trinidad and Tobago. The Chapter itself
provides by its terms a comprehensive code for
their protection and enforcement subject to
certain limitations not in issue here as to their
range of operation - See in this connection
Maharaj v. A.G. of Trinidad and Tobago 1978 2
A.E.R. 670; De Freitas v. Benny 1976 Appeal
Cases 239; 1975 3 Weekly Law Reports 388; (a case
involving the interpretation of the fundamental
human rights provisions of the Independence
Constitution of Trinidad and Tobago, 1962).

It will be convenient at this stage to set
out the material provisions of all the relevant
legislation which, to my mind, call for scrutiny
in this case.

20 The Constitution of the Republic of Trinidad
and Tobago Act No.4 of 1976 (hereinafter called
"the Act") established the Republic of Trinidad
and Tobago and for this purpose enacted the
Constitution of the Republic (hereinafter called
"the Constitution"). This was done under and
by virtue of the provisions of section 38 of the
Trinidad and Tobago Constitution Order in
Council, 1962, (hereinafter called "the former
30 Constitution"). The Constitution is contained
in the Schedule to the Act. Its preamble is
as follows :-

"Whereas the People of Trinidad and
Tobago :-

- 40 (a) have affirmed that the Nation of
Trinidad and Tobago is founded upon
principles that acknowledge the
supremacy of God, faith in fundamental
human rights and freedoms, the position
of the family in a society of free men
and free institutions, the dignity of
the human person and the equal and
inalienable rights with which all
members of the human family are endowed
by their Creator;
- (b) respect the principles of social justice
and therefore believe that the operation
of the economic system should result in
the material resources of the community
being so distributed as to subserve the
50 common good, that there should be

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adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(continued)

- (c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority; 10
- (d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;
- (e) desire that their Constitution should enshrine the abovementioned principles and beliefs and make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms." 20

The preamble is followed by a Preliminary part and by a chapter relating to fundamental human rights and freedoms. The relevant provisions of these two are as follows :-

PRELIMINARY 30

- "1. (1) The Republic of Trinidad and Tobago shall be a sovereign democratic State.
- (2)
- 2. This Constitution is the supreme law of Trinidad and Tobago and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency.
- 3."

CHAPTER 1

The Recognition and Protection of Fundamental Human Rights and Freedoms 40

PART I

Rights Enshrined

In the High Court

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(continued)

"4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely :-

10

- (a)
- (b) the right of the individual to equality before the law and the protection of the law;
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)

20

- (i)
- (j)
- (k)

5. (1) Except as is otherwise expressly provided in this Chapter or in section 54 no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.

30

- (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -
 - (a)
 - (b)
 - (c)
 - (d)

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- (e)
- (f)
- (g)
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

PART 4

Exceptions for Certain Legislation

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13. (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

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(2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3)

PART 5

GENERAL

30

14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

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(2)

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10 Among the later Chapters of the Constitution are to be found those which deal with Parliament (Chapter 4) the Executive (Chapter 5) and the Judicature (Chapter 7). In the aforesaid respective Chapters the composition, functions and powers of the three respective organs of the sovereign democratic State are clearly prescribed and documented.

In particular, the following provisions of the Chapter on Parliament which are material for the purposes of this case are here set out:-

CHAPTER 4

PARLIAMENT

PART 1

COMPOSITION OF PARLIAMENT
Establishment

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"39. There shall be a President of Trinidad and Tobago which shall consist of the President, the Senate and the House of Representatives.

The Senate

40. (1) The Senate shall consist of thirty-one members (in this Constitution referred to as "Senators") who shall be appointed by the President in accordance with this section.

(2) Of the thirty-one Senators -

30

- (a) sixteen shall be appointed by the President acting in accordance with the advice of the Prime Minister.
- (b) six shall be appointed by the President acting in accordance with the advice of the Leader of the Opposition; and
- (c) nine shall be appointed by the President in his discretion from

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outstanding persons from economic or social or community organizations and other major fields of endeavour.

THE HOUSE OF REPRESENTATIVES

- 46. (1) Subject to the provisions of this section, the House of Representatives shall consist of members who shall be elected in the manner provided by Parliament. 10
- (2) There shall be thirty-six members of the House of Representatives or such other number of members as corresponds with the number of constituencies as provided for by an Order made by the President under section 72.
- (3) Where any person who is not a member of the House of Representatives is elected to be Speaker of the House he shall, by virtue of holding the office of Speaker, be a member of the House in addition to the thirty-six or other number of members aforesaid. 20
- 49. (1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of Parliament after his election.
- (2) A member of the House of Representatives shall also vacate his seat in the House where - 30
 - (a) he resigns it by writing under his hand addressed to the Speaker, or where the office of Speaker is vacant or the Speaker is absent from Trinidad and Tobago, to the Deputy Speaker;
 - (b) he is absent from the sitting of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House; 40
 - (c) he ceases to be a citizen of Trinidad and Tobago
 - (d) subject to the provisions of subsection (3), and circumstances

arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of sub-section (1) of section 48 or any law enacted in pursuance of sub-section (2) of that section.

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- 10 (3) Where circumstances such as are referred to in paragraph (d) of sub-section (2) arise because any member of the House of Representatives is under sentence of death or imprisonment, is mentally ill, declared bankrupt or convicted of an offence relating to elections, and where it is open to the member to appeal against the decision, either with the leave of a court or
20 other authority or without such leave, he shall forthwith cease to perform his functions as a member of the House so however, that subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter.

PART 2

Powers, Privileges and Procedure

- 30 53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so however that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act, 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.
- 40 54. Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962.

(2) In so far as it alters -

- (a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 110, 113, 116 to 125 and 133 to 137;
or

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(b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),

a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House.

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(3) In so far as it alters -

(a) this section;

(b) sections 22, 23, 24, 26, 28 to 34, 38 to 40, 46, 49(1), 51, 55, 61, 63, 64, 68, 69, 71, 72, 87 to 91, 93, 96(4) and (5), 97, 109, 115, 138, 139, or the Second and Third Schedules;

(c) section 3 in its application to any of the provisions specified in paragraph (a) or (b); or

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(d) any of the provisions of the Trinidad and Tobago Independence Act, 1962;

a Bill for an Act under this section shall not be passed by Parliament unless it is supported at the final vote thereon -

(i) in the House of Representatives by the votes of not less than three-fourths of all the members of the House; and

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(ii) in the Senate by the votes of not less than two-thirds of all the members of the Senate.

(4) For the purposes of subsections (2) and (3) the number of members of the Senate shall, even though circumstances requiring the appointment of temporary members in accordance with section 44(1) have arisen, continue to be the number of members specified in section 40(1).

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(5) No Act other than an Act making provision for any particular case or class of case, inconsistent with provisions

of this Constitution, not being those referred to in subsections (2) and (3), shall be construed as altering any of the provisions of this Constitution, or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962, unless it is stated in the Act that it is an Act for that purpose.

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(6) In this section references to the alteration of any of the provisions of this Constitution or the Trinidad and Tobago Independence Act, 1962, include references to repealing it, with or without re-enactments thereof or the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith to modify it and to suspending its operation for any period.

20

61. (1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall, except where otherwise authorised by statute, be exercised by Bills passed by the House of Representatives and the Senate and assented to by the President.

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(2) When a Bill is presented to the President for assent, he shall signify that he assents or that he withholds assent.

(3) A Bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution.

40

(4) A Bill may be assented to during the period occurring between the end of one session of Parliament and the beginning of the next or at any subsequent time during the life of that Parliament.

The Amendment Act was passed in the House of Representatives on the 15th April, 1978, and in the Senate on the 19th April of the same year. In both cases it was passed by an amount equivalent to more than two-thirds of the membership of these Houses i.e. twenty-seven (27) and twenty-five (25) votes respectively. It was so certified. It was assented to by the

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President on the 19th April, 1978. Its material provisions for the purposes of this case are as follows :-

"(3) Section 49(2) of the Constitution is amended by adding immediately after paragraph (d) the following new paragraph :-

"(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party."

10

(4) The Constitution is amended by inserting immediately after section 49 the following new section :-

"49A. (1) Where circumstances such as are referred to in section 49(2) (e) arise, the Leader in the House of Representatives of the party as a candidate of which the member was elected, shall so inform the Speaker in writing of those circumstances and the Speaker shall, at the sitting of the House of Representatives next after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be."

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(2).....

(3).....

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(4).....

(5)....."

The Constitution of the Republic of Trinidad and Tobago (Amendment) (No.2) Act of 1978 - Act No.16 of 1978 - the provision of which, as I have already indicated, have not been impugned in this motion was passed in the House of Representatives on the 17th April, 1978, and in the Senate on the 19th April of the said year by the votes of twenty-eight (28) and twenty-nine (29) members respectively which in each case were amounts equivalent to the percentage of votes requisite for its constitutional validity i.e. three quarters of the membership. It was so certified. It received the assent of the President on the 20th April, 1978. It repealed and replaced section 69(3) of the Constitution.

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It was in the following terms :-

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"2. Section 69(3) of the Constitution set out in the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, 1976, is repealed and replaced as follows :-

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"(3) Where a vacancy occurs in the House of Representatives within the first four years of the life of the Parliament a bye-election shall be held to fill such vacancy not later than ninety days from the date of the announcement by the Speaker of the vacancy."

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It seems to me clear beyond peradventure from a proper examination of the Constitution that, like the former Constitution, the Constitution is based on Westminster lines. With regard to these Constitutions based on the Westminster Model, such as the Constitution of our Republic, Lord Diplock in Hinds v. R. 1976 1 A.E.R. 353 had this to say at page 360:-

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"The more recent Constitutions on the Westminster model unlike their earlier prototypes include a chapter dealing with fundamental rights and freedoms. The provisions of this chapter form part of the substantive law of the state and until amended by whatever special procedure is laid down in the Constitution for this purpose, impose, a fetter on the exercise of the legislature, the executive and the judiciary of the plenitude of their respective powers. The remaining chapters of the Constitution are concerned not with the legislature, the executive and the judiciary as abstractions but with the persons who shall be entitled collectively or individually to exercise the plenitude of legislative, executive or judicial powers - their qualifications for legislative, executive or judicial office, the method of selecting them, their tenure of office, the procedure to be followed where powers are conferred on a class of persons acting collectively and the majorities required for the exercise of those powers."

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In the course of his submissions counsel for the applicant made a vigorous attack upon the policy and propriety of the impugned Amendment Act.

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He claimed that the measure sought to be introduced under the umbrella of the impugned Amendment Act was an abuse of the Constitution. It was a measure designed in essence to deal through the legislature with party political squabbles. The Amendment Act was being used as the instrument whereby a measure, which had its roots in private domestic party affairs and differences, was being made a matter of public law. This he claimed was a usurpation by Parliament of the Constitution.

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Complaints of the sort have been echoed from time to time, although in different language and/or for different reasons, in various Courts of the Commonwealth and in regard to them the Courts have been careful to lay down and identify what is in essence their true role and function.

Thus, in Vacher and Sons Ltd. v. London Society of Compositors 1913 Appeal Cases 107
Lord Macnaughton in the House of Lords had this to say at page 118 :-

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"Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. "The duty of the Courts, and its only duty, is to expound the language of the Act in accordance with the settled rules of Construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature."

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In Attorney General for Ontario v. Attorney General for Canada 1912 Appeal Cases 571 -
a case concerned with the Canadian Constitution Earl Loreburn, Lord Chancellor, in delivering the judgment of the Privy Council said this at page 583 :-

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It cannot be too strongly put that with the wisdom or expediency or policy of an Act, lawfully passed, no court has a word to say. All, therefore, that their Lordships can consider in the argument under review is whether it takes them a step towards proving that this Act is

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outside the authority of the Canadian Parliament, which is purely a question of the Constitutional law of Canada."

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In the Australian case of Amalgamated Society of Engineers v. Adelaide Steamship Ltd. 1920-21 28 Commonwealth Law Reports 129 Isaacs J. speaking for himself, Knox CJ. Rich J. and Starke J. had this to say also at page 151:-

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10 "But possible abuse of powers is no reason in British Law for limiting the natural force of the language creating them. It may be taken into account by the parties when creating the powers, and they, by omission of suggested powers or by safeguards introduced by them into the compact, may delimit the powers created. But once the parties have by the terms they employ defined the permitted limits, no Court has any right to narrow those limits by reason of any fear that the powers as actually circumscribed by the language naturally understood may be abused. This has been pointed out by the Privy Council on several occasions, including the case of Bank of Toronto v. Lambe (12 Appeal Cases 575 at 586-587). The ordinary meaning of the terms employed in one place may be restricted by terms used elsewhere; that is pure legal construction. But, once their true meaning is so ascertained, they cannot be further limited by the fear of abuse.

20 The non granting of powers, the expressed qualifications of powers granted, the expressed retention of powers, are all to be taken into account by a Court. But the extravagant use of the granted powers in the actual working of the Constitution is a matter to be guarded against by the Constituencies and not by the Courts. When the people of Australia to use the words of the Constitution itself "united in a Federal Commonwealth," they took power to control by ordinary constitutional means any attempt on the part of the national Parliament to misuse its powers. If it be conceivable that the representatives of the people of Australia as a whole would ever proceed to use their national powers to injure the people of Australia considered sectionally, it is certainly within the power of the people themselves to resent and reverse what may be done. No protection of this Court in such a case is necessary or

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proper.....The one clear line of judicial inquiry as to the meaning of the Constitution must be to read it naturally in the light of the circumstances in which it was made, with knowledge of the combined fabric of the common law, and the statute law which preceded it and then lucet ipsa per se."

(See also in this connection Basu's Shorter Constitution of India - 7th Edition - Vol.1 - Pages 20-21). 10

I have adverted to these instructive dicta on the one hand because counsel for the applicant made the policy and/or propriety of the impugned Amendment Act one of the basis for his assault upon the constitutionality of the said Act and on the other because it seemed to me that the applicant himself appeared to make this one of the basis for his complaint - see in this connection his supplemental affidavit filed on the 6th July, 1978. In accordance with my true functions, as shown in the cases hereinbefore cited, I hold that this contention is wholly irrelevant to the issue with which I am seised. There is, in my view, more support for this view. I hope to demonstrate this even further when I come later to deal in extenso with the real issue that is before me - that is to say the question whether or not the Amendment Act is intra vires the powers of Parliament. 20 30

I would preface my enquiry into this question by postulating what is now trite law and which, therefore, does not call for the citation of authority to support it. It is to the effect that there is a presumption of the constitutionality of legislation and that the burden is upon him who contends otherwise.

Counsel for the applicant submitted that the Amendment Act was ultra vires the Constitution because it was not passed in accordance with the constitutional prescriptions. An Act of this kind, he argued, required for its constitutional validity the concurrence of a majority of at least three quarters of the elected members of the House of Representatives. In this case (and this was not disputed) by reasons of the provisions of sub-section 3 of section 46 the complement of the House was thirty-seven (37). In the event, assessed in arithmetical terms, the votes of at least twenty-eight (28) members, he argued, were 40 50

requisite to give it legal validity. Since it was passed by a majority of only twenty-seven (27) members and not by at least twenty-eight (28) of them, the Amendment Act, counsel submitted, was unconstitutional void and of no effect.

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10 In justification of his contention counsel submitted, as I understood his argument, that section 49 of the Act was a single comprehensive code relating to legislative tenure. Sub-section 1 thereof was the dominant and governing provision. Sub-section 2 thereof was a proviso thereto. Sub-section 2 was, therefore, governed by and was not independent of sub-section 1. Sub-section 1, he contended, was a constitutional declaration of the security of legislative tenure of a person once validly elected and of his vested right to sit in and be a member of the House for five years certain
20 subject only to the exceptions prescribed in sub-section 2. Any purported addition to the exceptions in sub-section 2 after a person's valid election to the House following the general elections would be a trespass upon the security of tenure of five years which vested in that elected member following the said general elections as provided for in sub-section 1. Any such purported legislation would in essence be an amendment of sub-section 1 or an alteration
30 of its provisions and as such would constitute an abrogation of an elected member's declared and vested right of legislative tenure for five years. For this purpose the marginal note to the section, he contended, was a proper aid to an understanding and interpretation of the section. In the result, any additional encroachment upon subsection 2 was for the purposes of its constitutional validity subject to the constitutional strictures of section 54 - sub-section 3 when read together with section 54 -
40 sub-section 1. In the event, since the Amendment Act was not passed by a three-quarters majority which in this case was one of twenty-eight (28) votes the Amendment Act was ultra vires the Constitution since it infringed the applicant's fundamental human right to "the protection of the law" recognised, guaranteed and enshrined in section 4(b) of the Constitution.

50 On the other hand, as I understood the argument of both Mr. Wooding for the Speaker of the House and Mr. Blackman for the Attorney General, they contended inter alia that the Constitution contemplated two separate and

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distinct situations where the jurisdiction of the Court could be invoked for a breach of the Constitution. On the one hand, there was section 14. This enforcement provision was concerned with those cases where for example some legislation passed after the Constitution and dealing with a general or particular situation or case is alleged in its application to trespass upon some guaranteed human right or fundamental freedom of a party. In such a case that party may invoke the section by moving the High Court by originating motion under Order 55 of the Orders and Rules of the Supreme Court of Trinidad and Tobago 1975. On the other hand, there was section 2 of the Constitution. This was a broader and more elaborate provision. It is concerned, for example, with those cases where legislation purports to amend some provision or provisions of the Constitution in violation of the Constitution itself as, for example, where the purported amendment was not passed in accordance with the constitutional prescriptions. In such event the jurisdiction of the High Court may be invoked not under Order 55 but under section 2 for a Declaration in the ordinary way.

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Both counsel submitted that the motion under section 14 was misconceived and that, in any event, the Amendment Act was intra vires the Constitution. In the latter case this was so, they contended, because the Amendment Act was intra vires the plenitude of the powers of the Parliament of the Republic. The Amendment Act, they submitted, was non-discriminatory in its character, content, administration and application. It cut across all persons, classes, shades and boundaries and was within the contemplation and authority of the Constitution by reason of the conjoint operation of sections 5, 53 and 54(1) and (2) thereof.

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(sic) They both submitted further that while sub-sections 1 and 2 of section 49 were for convenience and elegant drafting grouped together in one place, they were manifestly wholly independent of each other since in substance they were concerned and geared to deal with essentially different criteria. Both sub-sections, they contended, were substantive enactments in themselves. Sub-section 1 was based on the Westminster lines and had its roots in the experience of the Long Parliament. It seeks to lay down as in England a point of time when the collective body of members of the House must all vacate their seats. It does not deal with any question

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of disability. Nor is it a disqualifying provision. It is a legislative description of an inevitable and fixed event when the collective representatives of the House must all vacate their seats. On the other hand, sub-section 2 was concerned, they claimed, with individual members of Parliament and particular events the happening of which in relation to any member during the currency of the House would put a premature end to that member's legislative period of tenure prescribed in sub-section 1. Sub-section 2 stood on its own and was conceptually different from sub-section 1. It is a disqualifying provision. It presupposes the continued existence of Parliament but describes a list of disparate circumstances by which a member may vacate his seat. Those circumstances were completely independent of that in sub-section 1. Sub-section 2, they claimed, is not exhaustive and therefore, it was, within Parliament's competence and authority to add to it.

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Again both counsel contended that, unlike sub-section 1 of section 49, sub-section 2 was not an entrenched provision as such. However, by reason of the provisions of section 53 and 54(1), it was within the competence and authority of Parliament by enactment to alter sub-section 2 by adding to the disqualifications prescribed therein at any time. But, in the event that Parliament did so and if the enactment was capable by its terms of trespassing upon any of the fundamental rights and freedoms of a person so affected by the legislation, the particular enactment would be caught by section 54(2) and would therefore only be valid as not being inconsistent with the Constitution (section 2) if it was passed by a majority of at least two-thirds of the members of Parliament as prescribed by the said sub-section..

They submitted finally that since the Amendment Act was passed in accordance with the requisite majority under section 54(2) then quoad the said Act to the extent that it purported to infringe any of his fundamental human rights, the applicant could not invoke the provisions of section 14 but that the application should have been made under section 2 of the Constitution; that thereby the application was misconceived; that in any case the Amendment Act was non-discriminatory; and that further the said Act was intra vires the Constitution. and not inconsistent therewith.

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In my opinion, the question whether the Amendment Act is ultra vires any of the provisions of the Constitution must necessarily depend upon the extent of the plentitude of powers of the Parliament of the Republic. And the answer to this question must itself depend upon the true interpretation of those provisions of the Constitution which regulate the exercise by the Parliament of the sovereign state of the plentitude of its powers.

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Before I proceed to this question, however, it will be useful, I think, to refer to some of the cases involving countries with written Constitutions.

Speaking for himself Knox C.J., Rich J. and Starke J. in Amalgamated Society of Engineers v. Adelaide Steamship Co.Ltd. (supra) Isaacs J. again had this to say at page 142 about the approach to an interpretation of the then Constitution of Australia :-

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"That instrument is the political compact of the whole of the people of Australia, enacted into binding law by the Imperial Parliament, and it is the chief and special duty of this court faithfully to expound and give effect to it according to its own terms, finding the intention from the words of the compact, and upholding it throughout precisely as framed."

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The Privy Council has itself been faced at various periods with this same question and has laid down in very clear terms the principles by which a court of law should be guided. In R. v. Burah 1877-78 3 Appeal Cases 889 a case from India - Lord Selborne at pages 904-905 said this :-

"The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction

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by which that power is limited
it is not for any court of justice to
enquire further, or to enlarge constructive-
ly those conditions and restrictions."

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In Attorney General for Ontario v. Attorney
General for Canada (supra) Lord Loreburn L.C.
also had this further to say at page 583 :-

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"In the interpretation of a completely
self-governing Constitution founded upon a
written organic instrument, such as the
British North America Act, if the text is
explicit the text is conclusive, unlike
in what it directs and what it forbids.
When the text is ambiguous.....
recourse must be had to the context and
scheme of the Act. Again, if the text
says nothing expressly then it is not to be
presumed that the Constitution withholds
the power altogether. On the contrary, it
is to be taken for granted that the power
is bestowed in some quarter unless it be
extraneous to the statute itself (as, for
example, a power to make laws for some
part of Her Majesty's dominions outside of
Canada) or otherwise is clearly repugnant
to its sense. For whatever belongs to
self-government in Canada belongs either
to the Dominion or to the provinces, within
the limits of the British North America
Act. It certainly would not be sufficient
to say that the exercise of a power might
be oppressive, because that result might
ensue from the abuse of a great number of
powers indispensable to self-government,
and obviously bestowed by the British North
America Act. Indeed it might ensue from
the breach of almost any power."

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In Hinds v. R. (supra)- a case coming from
Jamaica - Lord Diplock speaking for the majority
of the Board had this to say at page 359 -
Letter 'A' :-

"A written Constitution, like any other
written instrument affecting legal rights
or obligations, falls to be construed in
the light of its subject matter and of the
surrounding circumstances with reference
to which it was made."

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And after referring to the two types of
Constitution - federal and unitary - which are
to be found in the Commonwealth he had this to
say later on the same page.

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"Nevertheless all these Constitutions have two things in common which have an important bearing on their interpretation. They differ fundamentally in their nature from ordinary legislation passed by the Parliament of a sovereign state. They embody what is in substance an agreement reached between representatives of the various shades of political opinion in the state as to the structures of the organs of Government through which the plenitude of the sovereign power of the state is to be exercised in future. All of them were negotiated as well as drafted by persons nurtured in the tradition of that branch of the common law of England that is concerned with public law and familiar in particular with the basic concept of separation of legislative, executive and judicial power as it had been developed in the unwritten constitution of the United Kingdom. As to their subject matter, the peoples for whom new constitutions were being provided were already living under a system of public law in which the local institutions through which governments were carried on, the legislature, the executive and the courts, reflected the same basic concept. The new constitutions particularly in the case of unitary states were evolutionary not revolutionary. They provided for continuity of government through successor institutions, legislative, executive and judicial, of which the members were to be selected in a different way, but each institution was to exercise powers, which, although enlarged, remained of a similar character to whose that had been exercised by the corresponding institution that it had replaced."

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In the same case of Hinds v. R. (Supra) Viscount Dilhorne and Lord Fraser of Tullybelton had this to say at page 380 - letter "F" :-

"A written constitution must be construed like any other written document. It must be construed to give effect to the intentions of those who made and agreed to it and those intentions are expressed in or to be deduced from the terms of the constitution itself and not from any

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preconceived ideas as to what such a constitution should or should not contain. It must not be construed as if it was partly written and partly not."

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10 The Constitution, in my opinion, is not a static document. It is an organic instrument capable of alteration and orderly growth according to the vicissitudes of life and the experience and demands of the peoples of the sovereign state and as finally resolved by their representatives in Parliament. Like its predecessor, the former Constitution, it was enacted in the fervent hope that this young community would nurture it and through it would work out its own salvation. The community means the entire citizenry - the constituencies - whose ultimate responsibility it is to ensure that their emissaries to Parliament would safeguard, preserve and uphold the Constitution and its tenets and if necessary improve upon them and not by contrast abuse their powers and sacred pledges. Albeit, while Parliament may have these wide powers and is endowed with this trust it cannot usurp the Constitution by exceeding its permissible boundaries for in such case the Supreme Court as the guardian of the Constitution will act if its jurisdiction is invoked. There is ample support, I think, for this view. In Collymore and Abraham v. The Attorney General 1967 12 W.I.R. 5 a case concerned with an alleged infringement by an Act of the Parliament of Trinidad and Tobago of the fundamental right of freedom of association guaranteed in Chapter 1 of the former Constitution Wooding C.J. said this at page 9 - Letter "A" :-

40 ".....our Supreme Court has been constituted, and is, the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by Parliament is ultra vires and therefore void and of no effect because it abrogates, abridges or infringes or authorises the abrogation, abridgement or infringement of one or more of the rights and freedoms recognised and declared by section 1 of the Chapter."

50 Again, in Hinds v. R. (supra) Lord Diplock speaking again for the majority of the Board had this to say at page 361 - Letter "D" :-

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".....where.....a constitution on the Westminster model represents the final step in the attainment of full independence by the peoples of a former colony or protectorate, the constitution provides machinery whereby any of its provisions, whether relating to fundamental rights and freedoms or to the structure of government and the allocation to its various organs of legislative, executive or judicial powers, may be altered by those peoples through their elected representatives in the Parliament acting by specified majorities, which is generally all that is required, though exceptionally as respects some provisions the alteration may be subject also to confirmation by a direct vote of the majority of the people themselves. The purpose served by this machinery for entrenchment is to ensure that those provisions which were regarded as important safeguards by the political parties.....minority and majority alike, who took part in the negotiations which led up to the constitution, should not be altered without mature consideration by the parliament and the consent of a larger proportion of its members than the bare majority required for ordinary laws. So in deciding whether any provisions of a law passed by the Parliament.....are inconsistent with the constitution.....neither the courts.....nor their Lordship's Board are concerned with the propriety or expediency of the law impugned. They are concerned solely with whether those provisions, however reasonable and expedient, are of such a character that they conflict with an entrenched provision of the Constitution and so can be validly passed only after the Constitution has been amended by the method laid down by it for altering that entrenched provision."

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(sic) So to reiterate the primary question for consideration is whether Parliament had the power and authority to pass the Amendment Act and, if so, whether the manner in which it purported to so pass it was constitutionally permissible. This would depend according to the authorities herein cited upon the terms of the Constitution itself with particular reference to those relating to the powers of and the manner of exercise of such powers of Parliament. In this connection it seems to me

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that upon a literal interpretation of section 54 of the Constitution, that section recognises the right of and endows Parliament with the power to alter any of the provisions of the Constitution save that in the case where the alteration is in respect of an entrenched provision it enjoins that Parliament should first ensure that the votes of the required majority in both Houses are obtained and certified if the alteration is to have constitutional validity.

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(continued)

I confess that I have not been able to discover anything in the terms of Chapter 4 or elsewhere in the Constitution which would entitle me to say that Parliament was legally precluded from passing the Amendment Act either at all or in the manner by which it was so passed. This was not a case of an attempted usurpation of powers by Parliament under the umbrella of the authority of Parliament to make laws for peace, order and good government - Liyanage v. R. 1966 2 A.E.R. 650. Nor indeed was this the case where some legislation other than one dealing with an amendment of the constitution, was enacted by Parliament which trespassed upon a citizen's constitutionally guaranteed right and was not passed in accordance with the constitutional prescriptions - Trinidad Islandwise Cane Farmers Association and the Attorney General v. Prakash Seereeram - Civil Appeals Nos. 11 and 14 of 1975. Further, I find it not only difficult but impossible to accept Mr. Solomon's submission that the Act was caught by section 54(3). The sub-section specifically enjoins the concurrence of a three-quarters majority in the case of an alteration of the provisions of sub-section 1 of section 49. If, therefore, the same majority was required for an alteration of sub-section 2 of the section as Mr. Solomon so strenuously contended, it seems to me that the framers of the Constitution would have said so expressly and would not have left the matter for resolution in the somewhat nebulous and/or circuitous way for which Mr. Solomon has contended. In this connection I am reminded of the maxims "expressum facit cessare tacitum" and "expressio unius est exclusio alterius." These maxims, to my mind demonstrate the flaws in Mr. Solomon's argument. Besides I consider that section 54 when read as a whole and in the light of the legislative scheme admits, to my mind, of no ambiguity or absurdity whatsoever. The maxims only serve to reinforce my view. Also, I reject too Mr. Solomon's submission that the marginal note to

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(continued)

section 49 is of assistance to an interpretation of that section. I have taken this stand not merely because the view today is still that marginal notes "can afford no legitimate aid to construction" - (See in this connection Craie's Statute Law - 7th Edition - pages 196-197) but more particularly because again I consider that section 54 when read as a whole and in the light of the legislative scheme admits, to my mind, of no ambiguity or absurdity whatsoever. In the event, I hold that sub-section 2 of section 49 is not caught by section 54 - sub-section 3 of the Constitution. Here I merely wish to observe that a greater majority is required under section 54 - sub-section 2 - than in the case of an enactment caught by section 13.

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I agree with the submissions of both counsel for the respondents that sub-section 2 of section 49 is not an exhaustive provision; that it stands on its own; and that it is wholly independent of and is not a proviso to sub-section 1 of the said section. I am reinforced in arriving at this conclusion, I think, by the context in which the word "also" has been used in sub-section 2.

In my view, upon a proper construction of sections 5, 53 and 54 of the Constitution the Amendment Act is not repugnant to the Constitution. On the other hand, in my view, its enactment :-

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- (a) is incidental to the complete independence and sovereignty of the State; and
- (b) is within the plenitude of the powers of Parliament.

Parliament must be deemed to have considered the law necessary for peace, order and good Government. The Amendment Act was passed by the necessary majorities under section 54(2) under which, in my view, it fell to be caught or to be capable of being caught. It was, therefore, in my view, a valid law. Besides, it was non-discriminatory in character, content, administration and application. To the extent, therefore, that the Amendment Act infringed or could be said to infringe any of the applicant's guaranteed fundamental human rights and freedoms enshrined in Chapter 1 then quoad the said Act the applicant could not

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complain of any infringement of those rights or freedoms. He, therefore, in my opinion, on the coming into force of the Amendment Act, had no locus under section 14. The application, in my view, was properly one for complaint under section 2. Since it was not so brought, the application, in my view, is misconceived.

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(continued)

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Besides, insofar as the Amendment Act could be said, quoad the said Act, to violate the right of a member of the House of Representatives to join political parties and to express political views, (and this, it seems, could include a change from one party to the next or going in opposition by crossing the floor), or to violate his freedom of conscience, his freedom of thought and expression or his freedom of association all of which are guaranteed and enshrined in Chapter 1 and with which the Amendment Act could for the purposes of its operation and/or application as a whole or in its application to any given case be said, in my view, to collide with any or all of the aforesaid fundamental human rights and freedoms or for the sake of argument the guaranteed right to equality before the law and the protection of the law, then since the Amendment Act was non-discriminatory in its character, content, administration and application and since, in my view, its enactment was within the plenitude of the powers of Parliament and, moreover, since it was passed in accordance with the legislative prescriptions - see in this connection sections 5, 53, 54(1) and (2) of the Constitution - I hold further that the Amendment Act does not violate section 2 of the Constitution either.

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I think the following observations of Isaacs J. speaking for himself and the same judges in Amalgamated Society of Engineers v. Adelaide Steamship Co.Ltd. (supra) at page 154 are apposite to this case :-

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"It is undoubted that those who maintain the authority of.....Parliament to pass a certain law should be able to point to some enumerated power containing the requisite authority. But we also hold that, where the affirmative terms of a stated power would justify an enactment, it rests upon those who rely upon some limitation or restriction upon the power, to indicate it in the Constitution."

The applicant has, in my view failed to discharge the burden cast upon him to establish

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(continued)

to the satisfaction of the Court that the Amendment Act is ultra vires the Constitution null and void and of no effect.

In view of the conclusions which I have reached as to the approach to the interpretation of the Constitution, it seems to me unnecessary to consider the interesting arguments of counsel on both sides as to the meaning and extent of the expression "equality before the law and the protection of the law" guaranteed and enshrined in section 4(b) of the Constitution.

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For the reasons which I have set out herein the motion must fail and is accordingly dismissed. In accordance with the usual practice there will be no order as to costs.

Dated this 19th day of December, 1978

Clinton Bernard
Judge.

In the Court of Appeal

No.6

Notice of
Appeal

26th January
1979

No. 6

20

NOTICE OF APPEAL

IN THE COURT OF APPEAL

Civil Appeal No.17 of 1979
Action No. 1501 of 1978

IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago being the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, 1976

A N D

IN THE MATTER of the Application of ERROL MC LEOD (a person alleging that certain provisions of Chapter 1 of the said Constitution have been, are being or are likely to be contravened in relation to him) for redress in accordance with section 14 of the said Constitution.

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10 TAKE NOTICE that the applicant-appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of the Honourable Mr. Justice Clinton Bernard dated the 19th day of December, 1978, doth appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

In the Court
of Appeal

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Appeal
26th January
1979
(continued)

AND the applicant-appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole of the decision, namely, that the Motion be dismissed.

3. GROUND OF APPEAL

20 a) The learned Judge erred in law in holding that Act No.15 of 1978 did not have the effect of altering and/or breaching the provisions of section 49(1) of the Constitution and that, consequently, the Bill therefor did not require for its passage into law to be supported at the final vote thereon in the House of Representatives by the votes of not less than three-fourths of all the Members of that House.

30 b) The learned Judge erred in law in holding that the applicant-appellant "had no locus under section 14" of the Constitution and that the application was misconceived since it "was properly one for complaint under section 2" of the Constitution.

4. That the Judgment and Order be set aside and that the applicant-appellant be granted the relief sought in the Notice of Motion.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

- 40 1. The Attorney General,
Attorney General's office,
Red House,
Port-of-Spain.
2. The Honourable C.A.Thomasos, Esquire,
The Speaker,
House of Representatives,
Parliament Chamber,
Red House,
Port-of-Spain.

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Appeal

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1979

(continued)

3. Errol McLeod,
20, 42nd Street,
La Romain

Dated this 26th day of January, 1979

S/ Len Oscar Pierre
Solicitor for the Applicant-
Appellant, whose address for
services is No.41 St.Vincent
Street, Port-of-Spain

To: The Registrar of the Supreme Court of 10
Judicature

and

The State Solicitor,
State Solicitor's Office,
7 St.Vincent Street,
Port-of-Spain.

Solicitor for the Attorney General.

Messrs. Gittens, Smart & Co.,
78 Queen Street,
Port-of-Spain.

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Solicitors for the Respondent Thomasos.

No. 7

In the Court
of Appeal

JUDGMENT, DELIVERED BY
SIR ISAAC HYATALI C.J.

No.7
Judgment
Delivered by
Sir Isaac
Hyatali C.J.

29th July 1981

IN THE COURT OF APPEAL
Civil Appeal No.17 of 1979

IN THE MATTER of the Constitution of
Trinidad and Tobago

Between

ERROL McLEOD

Appellant

And

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

First
Respondent

And

ARNOLD THOMASOS, SPEAKER
OF THE HOUSE OF REPRESENTATIVES

Second
Respondent

Coram: Sir Isaac Hyatali, C.J.
C.A. Kelsick, J.A.
P.L.U. Cross, J.A.

20 July 29, 1981

J.A.Wharton, S.C. and F.Solomon - for appellant
E.Thorne, S.C. and Mrs.J.
Permanand, S.G. - for first
respondent

S.Wooding, S.C. and R.Martineau - for second
respondent

Delivered by Sir Isaac Hyatali, C.J.:

30 I agree with the leading judgment delivered
by Cross, J.A., the reasons he has given for
his conclusions and the order he has proposed.
I also agree with the judgment of Kelsick, J.A.
on the points he has dealt with therein and the
reasons for his conclusions.

Mr. Wooding for the second respondent
attractively argued, and Mr.Thorne readily

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of Appeal

No.7
Judgment
Delivered by
Sir Isaac
Hyatali C.J.
29th July 1981
(continued)

adopted his submissions, that s.49(1) of the Constitution was intended to deal with the structure of Parliament whereas s.49(2) was intended to deal with the personal position of individual members of Parliament within that structure. The first, he said, referred to matters which may be conveniently described as "in rem" and the second to matters which may be conveniently termed "in personam". Consequently, he contended, an amendment to s.49(2) which merely added to the list of disqualifications fell to be regarded as a matter "in personam" and could not be considered as an alteration of s.49(1).

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From my reading of s.49 however I am satisfied that the whole of its provisions deal with the tenure of office of all the members of the House of Representatives. It is clear to me that whereas s.49(1) provides for the tenure of each and every member to endure until the occurrence of a single event, namely, the dissolution of Parliament, s.49(2) provides for the tenure of each and every member to endure until the occurrence of any one of four events at any time prior to the dissolution of Parliament.

20

Section 49(2) therefore plainly impinges upon s.49(1) and is inconsistent therewith. It follows that any addition of a new event or disqualification in s.49(2) to terminate the tenure of office of a member of the House prior to its dissolution must also be held to impinge upon the tenure prescribed by s.49(1) and to render such addition inconsistent therewith. It is not merely adding to a list of disqualifications to s.49(2) as was contended, but prescribing a disqualification in respect of tenure which collides with the tenure provided for in s.49(1).

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I am fortified in this conclusion by applying the apt test proposed by Mr.Solomon for the appellant to the effect that: if the present provisions of s.49(2) were not enacted as part of the Constitution then clearly the disqualifications enumerated therein could not be validly enacted after the promulgation of the Constitution without the support of the majorities prescribed for altering s.49(1).

40

Parliament undoubtedly has the power to impose limitations on the right of members of the House to hold office for the life of

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Parliament but as it did not exercise that power in accordance with the prescriptions of the Constitution when it purported to enact the Amendment Act it laboured in vain. The Amendment Act is therefore null, void and of no effect and confers on the Speaker no authority whatsoever to act under its provisions.

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Sir Isaac
Hyatali C.J.

29th July 1981

(continued)

10 The conclusion however is no warrant for saying that none of the four disqualifications inconsistent with s.49(1) may not be validly altered by repealing or amending it by the simple majorities prescribed in relation to s.49 (2) of the Constitution. Such an alteration may of course be validly passed by such majorities if the proposed alteration to any of the four disqualifications specified in s.49(2) is not inconsistent with s.49(1) to a greater extent than any of them already is. If it is to such an extent then it would, in my judgment,
20 constitute a new or fresh impingement on s.49(1) in the same way as the addition of a new or fresh disqualification to s.49(2) would. For such an alteration to be validly enacted the proposed amendment must be passed by the majorities necessary to effect a change in or qualification to the tenure provided for by s.49(1).

30 Quite apart from the reasons given by Cross, J.A., with which I agree, for rejecting the contentions of the respondents that the procedure adopted by the appellant in moving the Court under s.14 of the Constitution vitiated the proceedings initiated by the appellant I feel obliged to state that I was impressed by and accept as sound the contention of Mr. Solomon that if the Amendment Act is invalid then in the circumstances disclosed herein the appellant, as a member of Parliament, stands threatened by the application to him of
40 an invalidly enacted statute which is calculated to deprive him of the protection of the law, namely, s.49(1) of the Constitution as qualified by s.49(2) thereof. To say in these circumstances, that a person threatened with action which is calculated to deprive him of the protection of that law, cannot seek redress therefor under s.14 of the Constitution by originating motion is, to my mind, a wholly untenable proposition since it gives an inter-
50 pretation to the entrenched fundamental right and freedom expressed as "the right of the individual to equality before the law and the protection of the law" in s.4 of the Constitution

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of Appeal

No.7

Judgment

Delivered by

Sir Isaac

Hyatali C.J.

29th July 1981

(continued)

that is at once narrow, rigid and restricted. Such an interpretation is clearly at variance with the principle of construction enunciated in the Privy Council by Lord Wilberforce in Minster of Home Affairs v. Fisher (1979) 3 All E.R.21, 26 to the effect that in a Constitution such as ours "there is room for interpreting it with less rigidity and greater generosity than other Acts such as those which are concerned with property, or succession or citizenship."

10

The orders of the Court are therefore as follows :

- (1) The appeal is allowed with costs in this Court only;
- (2) A declaration is granted as sought by the appellant that the Amendment Act, to wit, The Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978 passed by the House of Representatives on 15 April 1978 and by the Senate on 19 April 1978, and assented to on the said 19 April 1978 is null, void and of no effect on the ground that it has not been validly passed by Parliament.

20

The appellant also sought an order restraining the Hon. Speaker of the House from making in relation to the appellant any declaration in pursuance of section 4 of the Amendment Act, but as it follows from the Court's decision herein, that the Hon. Speaker of the House cannot lawfully act thereunder it is unnecessary to make the restraining order sought against him. It will suffice in the circumstances for the Clerk of Appeals to convey to the Clerk of the House for the information and guidance of the Hon. Speaker of the House an authenticated copy of the judgment of this Court and its formal order as written up and entered and it is directed that this be done with all convenient despatch.

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To safeguard the position of the appellant liberty to apply to this Court by motion is hereby granted to him.

Orders accordingly.

Isaac E. Hyatali
Chief Justice

No. 8
JUDGMENT, DELIVERED
BY C.A.KELSICK J.A.

In the Court
of Appeal

No.8
Judgment
Delivered by
C.A. Kelsick
J.A.
29th July 1981

IN THE COURT OF APPEAL
Civil Appeal No.17 of 1979

IN THE MATTER OF THE CONSTITUTION OF
TRINIDAD & TOBAGO

Between

ERROL MCLEOD Appellant

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And

THE ATTORNEY GENERAL OF First
TRINIDAD & TOBAGO Respondent

And

ARNOLD THOMASOS,
SPEAKER OF THE HOUSE Second
OF REPRESENTATIVES Respondent

Coram: Sir Isaac Hyatali C.J.
C.A.Kelsick J.A.
P.L.U. Cross J.A.

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July 29, 1981.

J.A. Wharton S.C. and F.Solomon - for the
appellant

E. Thorne S.C. and Mrs.J.Permanand S.C.
(Solicitor General) - for the First Respondent

S.Wooding S.C. and R.Martineau - for the Second
Respondent

Delivered by Kelsick J.A.

By notice of motion the appellant sought
the following reliefs :-

30

(1) a declaration that the Constitution of the
Republic of Trinidad and Tobago (Amendment)
Act, 1978, No.15 of 1978 ("the Act") is
ultra vires the Constitution of the
Republic of Trinidad and Tobago ("the

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of Appeal

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Constitution"), null and void and of no effect.

- (2) An order restraining the second respondent from making in relation to the applicant any declaration pursuant to s.4 of the Act.
- (3) Such further or other ancillary relief in accordance with s.14 of the Constitution as may in the premises be appropriate.

In the grounds for his application he recited (i) that he had been duly elected, and had duly been sworn in as, a member of the House of Representatives; and that he was elected as a candidate of a political party known as the United Labour Front and (ii) that sections 3 and 4 of the Act (which purport respectively to amend s.49(2) of, and to add section 49A to, the Constitution, are an alteration of the Constitution and that they were not effected in accordance with s.54(3) of the Constitution which required it to be passed by a vote of three-fourths of all members of the House of Representatives ("the House"); (iii) the certificate of the Clerk of the House certified that it was passed in the House (and in the Senate) by a majority of two-thirds of the said membership. The last ground was that the appellant as a citizen of the Republic and a member of the House elected by his constituents is entitled to "the protection of the law" guaranteed by sections 4(b) and 5(1) of the Constitution and that the term "law" as so employed covers the provisions of the Constitution, including s.54(3) thereof.

Section 4(b) of the Constitution recognises and declares the right of the individual to equality before the law and the protection of the law; and s.5(1) protects that right by prohibiting any law from directly or indirectly abrogating, abridging or infringing it except as provided in Chapter I. "Law includes any enactment". (See s.3 of the Constitution.

The amendment of s.49(2) by the Act was the addition of a paragraph (e). Section 49 as so amended and as far as relevant reads :-

"49(1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of Parliament after his election.

(2) A member of the House of Representatives

shall also vacate his seat in the House
where -

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(e) having been a candidate of a party
and elected to the House, he
resigns or is expelled from that
party."

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J.A.

10 The new s.49A is consequential on the first
amendment and provides for the announcement by
the Speaker, on being informed of a vacancy
occurring under s.49(2)(e), to make an announce-
ment to the House of such resignation or expulsion.

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(continued)

20 The trial judge (Bernard J.) refused to make
the declaration prayed for. In so doing he did
not accept the argument from the appellant that
the Act was an alteration of s.49(1), and there-
fore was caught under s.54(3). He held that,
if it did contravene s.4 or 5 of the Constitution
in relation to the appellant, it was validated
under s.54(2) which requires a two-thirds
majority in support thereof in the House and in
the Senate for an amendment to section 4 or 5.
This determination has been challenged in ground
(a) of the Notice of Appeal.

30 I concur (i) in the judgment of Cross J.A.,
whereby he would overrule that finding of the
judge; (ii) in the reasons he has given for the
conclusion that the Act is inconsistent with
s.49(1) of the Constitution, and (iii) in his
proposed declaration that the Act is null and void
and of no effect.

40 The crucial question is whether a member has
a vested right to serve his constituency for the
full term (of five years) for which he was
elected (see s.68) and which is entrenched in
s.49(1), and whether such right can be prematurely
terminated in any newly specified circumstances
by an Act of Parliament passed by a simple
majority; or whether it is an alteration of s.49(1)
which requires to be passed by the special majority
specified in s.54(3).

It seems to me that Parliament has made it
abundantly clear that such an amendment is the
making of provision for a particular case or class
of case inconsistent with s.49(1) as well as a
modification of that section, and therefore it is
an alteration within the definition thereof in
s.54(6).

In my opinion the several instances outlined
in s.49(2) in which a member must vacate his seat

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Judgment
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J.A.

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(continued)

before the expiration of the term makes that subsection in substance a proviso to s.49(1). Section 49(2) is a qualification or limitation on s.49(1), to which it is engrafted. It conforms with the description of Lord Esher M.R. in R. v. Barker (1890) 25 Q.B.D. 285 at p.292:-

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances."

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To adapt the language of Lord Esher later at p.292, upon the construction of s.49 alone it seems to me clear beyond doubt that an unlimited right is given to the member by subsection (1); and that subsection (2) limits that right in certain cases; but that in any case which is not within those mentioned in subsection (2) - the proviso - the right remains unlimited.

Section 49A is dependent on s.49(2)(e), and if that provision is invalid, s.49A itself becomes ineffectual and so cannot be severed. The remaining section 2 of the Act defines "the Constitution" appearing in sections 3 and 4. Accordingly the whole Act shares the taint of illegality of s.3.

20

As a logical result of his decision to refuse the declaration Bernard J. did not make the order directed to the Speaker prayed for in the motion. Having declared the Act to be null and void, and in the absence of any evidence that the Speaker intends to make any declaration regarding the appellant under s.49A, I would desist from issuing the said order in the confident expectation that this Court's decision will be respected by the Speaker.

30

I consider it opportune to add my comment on the other main issue which was agitated before this Court. This was the submission for the respondents to the effect that the proceedings were misconceived for the reason that the wrong procedure was followed.

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Counsel for both respondents maintained that the proper originating process was an originating summons, as prescribed under Order 5 of the Rules of the Supreme Court, 1975, ("R.S.C.") the relevant provisions of which are :-

"1. Subject to the provisions of any Act or Ordinance and of these Rules, civil

proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

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(continued)

... ..

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3. Proceedings by which an application is to be made to the High Court or a Judge thereof under any Act or Ordinance must be begun by originating summons except where by these Rules or by or under any Act or Ordinance the application in question is expressly required or authorised to be made by some other means.

This rule does not apply to an application made in pending proceedings.

20

4.(1) Except in the case of proceedings which by these Rules or by or under any Act or Ordinance are required to be begun by writ or originating summons or are required or authorised to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings -

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(a) in which the sole or principal question at issue is or is likely to be, one of the construction of an Act or Ordinance or of any instrument made under an Act or Ordinance or of any deed, will, contract or other document or some other question of law, or

40

(b) in which there is unlikely to be any substantial dispute of act, are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 83 or for any other reason considers proceedings more appropriate to be begun by writ."

The Constitution is embodied in a Schedule to, and forms part of, Act No.4 of 1976. Section 14 of the Constitution, so far as relevant, reads :-

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29th July 1981

(continued)

"14.(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

10

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1);

... ..

and may, . . . , make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled."

20

Order 55 of R.S.C. ordains that the originating motion must be supported by an affidavit showing that it is made at the instance of the applicant and setting out the provisions of the Constitution which he alleges has been, is being, or is likely to be contravened in relation to him and his reasons for so alleging.

30

The trial judge accepted the argument for the respondents that s.14 was not available to the appellant for the reason (i) that even if his fundamental right was infringed by the Act, it was passed by the two-thirds majority in Parliament prescribed for an Act amending sections 4 and 5 of the Constitution, and was therefore a valid law; (ii) that his right was not infringed since section 4(b) was to be read conjunctively and the Act was not discriminatory in character, content or application; (iii) to the extent that the Act could be said to infringe the appellant's fundamental right, then quoad the Act he could not complain; (iv) that the appellant himself had no locus standi under s.14; (v) that the application was misconceived; (vi) that it was one for a complaint under s.2 of the Constitution and should have been brought by the

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ordinary process of originating summons.

In the Court
of Appeal

Section 2 of the Constitution ordains
that :-

No.8
Judgment
Delivered by
C.A.Kelsick
J.A.

"This Constitution is the supreme law of
Trinidad and Tobago and any other law that
is inconsistent with this Constitution is
void to the extent of the inconsistency."

29th July 1981
(continued)

The appellant's second ground of appeal
is :-

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"The learned Judge erred in law in holding
that the applicant-appellant 'had no locus
under section 14' of the Constitution and
that the application was misconceived
since it 'was properly one for complaint
under section 2' of the Constitution."

Counsel for the appellant maintained that
s.4(b) was disjunctive and that it conferred
two separate rights. See Fraser J.A. in Bazie v.
Attorney General (1971) 18 W.I.R. at pp.129 E.,
I., 132A.

20

In this connection it may be noted that the
right is not to the equal protection of the law
as embodied in s.14 of the Indian Constitution
which reads :-

"The State shall not deny to any person
equality before the law or the equal
protection of laws within the security of
India."

30

The appellant relies on his right to the
protection of the law, namely s.54(3), under
which he is not to be deprived of his vested
right under s.49(1) except by a law passed under
and or in accordance with s.54(3). The allega-
tion in the instant case is that the Act
infringes that right.

40

The answer from the respondent is that the
passing of the Act invalidly is not a breach of
a fundamental right of the appellant; that
that right under s.4(b) is indivisible and a
single right and that it is aimed at establish-
ing equality of status and equal justice.
Reference was made to the following passage in
the Judgment of the Privy Council in Harrikissoon
v. The Attorney General (1979) 3 W.L.R. 62 :-

"The notion that whenever there is a

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of Appeal

No.8
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C.A.Kelsick
J.A.
29th July 1981
(continued)

failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the Court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the Court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom." 10 20 30

In Gordon v. Minister of Finance (1968) 12 W.I.R. 417 the question was whether the appellant had a "relevant interest" as required by s.96 of the St.Lucia Constitution Order in Council, 1962, for making an application for declaration and relief in aid of an alleged contravention of the Constitution. Bishop J. at p.419 said :- 40

"A person is to be considered as having a relevant interest if the contravention which he alleges is a contravention that affects his interest. (It is not his interest in or concern over the matter)."

The appellant was an elected member of the House of Representatives who had been returned as a candidate of a political party and the Act was likely adversely to affect his right to remain as such member for the term for which he had been elected. 50

In my judgment therefore the appellant had a locus standi to institute proceedings under s.14. The failure of the legislature to comply with s.54(3) entailed a contravention of his right to the protection of that law.

In the Court
of Appeal

No.8

Judgment
Delivered by
C.A.Kelsick
J.A.

29th July 1981

(continued)

If my view of the law is incorrect and the appellant should have proceeded by way of originating summons and not by originating motion then the proceedings are not void. I would invoke the power of the Court under Order 2 Rule 1 :-

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"1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these or any other Rules of court, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or other therein.

20

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

30

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

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2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party

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In the Court
of Appeal

No.8
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C.A.Kelsick
J.A.

29th July
1981

(continued)

applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion."

The procedure is not void but irregular and this Court will not wholly set aside the motion or the proceedings.

In this context it should be noted that no application was made pursuant to Order 2 Rule 2 to set side the motion for irregularity nor was any preliminary objection taken at the hearing. The respondent permitted the case to be heard on its merits and argued the invalidity of the proceedings in their reply before the trial judge. 10

I endorse the comments of Denning M.R. in Harkness v. Bell's and Engineering Asbestos Ltd. (1966) 3 All E.R. 843 at p.845-6 :- 20

"This new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the court can and should rectify so long as it can do so without injustice. It can at least be asserted that -

'It is not possible . . . for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation.' 30

That could not be said in 1963; see Re Pritchard (dec'd.) (1963) 1 All E.R.873; but it can be in 1966. The new rule does it.

This is plainly a case where we should put the matter right under the new provisions and the leave should be treated as granted properly. I would allow the appeal accordingly." 40

If the wrong originating process has been adopted I see no injustice in refraining to set aside the proceedings in whole or in part in this case in which the use of the originating motion does not fall within any of the strictures

in Harrikissoon's case.

C.A.Kelsick
Justice of Appeal.

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of Appeal

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Judgment
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J.A.

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(continued)

No. 9

JUDGMENT, DELIVERED BY
P.L.U. CROSS, J.A.

No.9
Judgment
Delivered by
P.L.U.Cross
J.A.

29th July 1981

IN THE COURT OF APPEAL

Civil Appeal No.17 of 1979

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IN THE MATTER of the Constitution of
Trinidad and Tobago

Between

ERROL McLEOD

Appellant

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

First
Respondent

And

ARNOLD THOMASOS,
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Second
Respondent

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Coram: Sir Isaac Hyatali, C.J.
C.A.Kelsick, J.A.
P.L.U. Cross, J.A.

July 29, 1981

J.A.Wharton, S.C. and F.Solomon - for appellant
E.Thorne, S.C. and Mrs. J. - for first
Permanand, S.G. respondent

In the Court
of Appeal

S.Wooding, S.C. and R.Martineau - for second
respondent

No.9
Judgment
Delivered by
P.L.U. Cross
J.A.
29th July 1981
(continued)

Delivered by Cross, J.A.

The appellant, Errol McLeod was elected a member of the House of Representatives of the Republic of Trinidad and Tobago at the general election held on 13th September, 1976. He was duly sworn in and took his seat and his membership of the House of Representatives continues. At the election the appellant had presented himself to the electorate as a member of a party called the United Labour Front. 10

At the time of his election the following provisions of the Constitution were in force :

"49.(1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of Parliament after his election. 20

(2) A member of the House of Representatives shall also vacate his seat in the House where -

(a) he resigns it by writing under his hand addressed to the Speaker, or where the office of Speaker is vacant or the Speaker is absent from Trinidad and Tobago, to the Deputy Speaker; 30

(b) he is absent from the sitting of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;

(c) he ceases to be a citizen of Trinidad and Tobago;

(d) subject to the provisions of sub-section (3) any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of sub-section (1) of section 48 or any law 40

enacted in pursuance of sub-
section (2) of that section.

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of Appeal

No.9

Judgment
Delivered by
P.L.U.Cross
J.A.

29th July 1981

(continued)

10 (3) Where circumstances such as are referred to in paragraph (d) of sub-section (2) arise because any member of the House of Representatives is under sentence of death or imprisonment, is mentally ill, declared bankrupt or convicted of an offence relating to elections, and where it is open to the member to appeal against the decision, either with the leave of a court or other authority or without such leave, he shall forthwith cease to perform his functions as a member of the House so however, that subject to the provisions of this section, he shall not vacate his seat until the expiration of thirty days thereafter."

20 On the 15th April, 1978 the Constitution of the Republic of Trinidad and Tobago (Amendment) Act (hereinafter called "the Amendment Act") was passed by the House of Representatives and on the 19th April, 1978 by the Senate. The passage of the Bill for the Amendment Act was supported by the votes of twenty-seven and twenty-five members of the respective Houses. At the relevant time the House of Representatives consisted of 37 members by virtue of the provisions of section 46(3) of the Constitution and the Senate thirty-one section 40(1)). The Amendment Act was therefore passed by the votes of more than two-thirds but less than three-fourths of the members of the House of Representatives. It received the assent of the President on 19th April, 1978.

30 The relevant provisions of the Amendment Act are as follows :

40 "3. Section 49(2) of the Constitution is amended by adding immediately after paragraph (d) the following new paragraph :-

'(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party.'

4. The Constitution is amended by inserting immediately after section 49 the following new section :-

In the Court
of Appeal

No.9
Judgment
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P.L.U. Cross
J.A.

29th July 1981
(continued)

'49A. (1) Where circumstances such as are referred to in section 49(2) (e) arise, the Leader in the House of Representatives of the party as a candidate of which the member was elected shall so inform the Speaker in writing of those circumstances and the Speaker shall, at the sitting of the House of Representatives next after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be.'

10

Shortly after the passing of the Amendment Act i.e. on 28th April, 1978, the appellant filed a motion in the High Court seeking a declaration that the purported amendment of section 49(2) of the Constitution constituted an alteration of the provisions of section 49(1) of the said Constitution and was ultra vires the Constitution since it was not supported by the votes of three-fourths of all the members of the House as is required by section 54(3) of the Constitution. The Attorney General and the Speaker of the House were named Respondents to the motion which was dismissed after a hearing before Bernard J. It is against that dismissal that the appellant now appeals.

20

The first ground of appeal is that the learned Judge erred in law in holding that the Amendment Act did not have the effect of altering and/or breaching the provisions of section 49(1) of the Constitution and that consequently the Bill therefor did not require for its passage into law to be supported by the votes of not less than three-fourths of the members of the House of Representatives.

30

The short but by no means simple question which this appeal raises is whether the Amendment Act has the direct effect of altering the provisions of section 49(1) of the Constitution. If it does then the constitutional requirement for its validity is the votes of not less than three-fourths of all the members of the House of Representatives, that is to say, 28 votes instead of the 27 which it in fact obtained. This requirement is laid down in section 54(3) of the Constitution which is as follows :-

40

"54. Subject to the provisions of this section Parliament may alter any of the provisions of this Constitution or (in so

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far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962.

In the Court of Appeal

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Judgment
Delivered by
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J.A.

29th July 1981
(continued)

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(3) In so far as it alters -

(a) this section

(b) section(s).....49(1).....

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a Bill for an Act under this Section shall not be passed by Parliament unless it is supported at the final vote thereon -

(i) in the House of Representatives by the votes of not less than three-fourths of all the members of the House."

20

The Amendment Act expressly purports to alter the provisions of section 49(2) and not section 49(1) of the Constitution. This is not of course conclusive nor is there in my opinion any room for the application of the so called presumption of constitutionality in so far as entrenched clauses are concerned. As was said by Lord Diplock in Hinds. V. R. (1967) 1 All E.R. 353 at p. 361 :-

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"..... in deciding whether any provisions of a law passed by the Parliament....are inconsistent with the Constitution. . . neither the courts nor their Lordship's Board are concerned with the propriety or expediency of the law impugned. They are concerned solely with whether those provisions, however reasonable and expedient are of such a character that they conflict with an entrenched provision of the Constitution and so can be validly passed only after the Constitution has been amended by the method laid down by it for altering that entrenched provision."

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(Emphasis added).

It is the duty of the court to examine the Amendment Act and to determine whether its provisions are of such a character that they conflict with section 49(1) and have a direct effect on it in such a manner that they can be

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of Appeal

No.9
Judgment
Delivered by
P.L.U.Cross
J.A.

29th July 1981
(continued)

said to alter it. In order to achieve this purpose it is necessary in the first place to decide the scope and ambit of section 49(1) and then to consider whether the Amendment Act has placed any restriction or limitation thereon.

Both sub-sections (1) and (2) of section 49 provide for circumstances in which a member of the House of Representatives shall vacate his seat. To that extent at least they are all of a piece. Counsel for both Respondents have argued that sub-section (1) provides for the collective vacation of their seats by all members on a dissolution whereas sub-section (2) details the circumstances which would cause an individual member to vacate his seat. This, they urge, points the distinction between the two sub-sections and explains why the Constitution has provided for a three-fourths majority in the first case only. This contention is ingenious but simplistic. After all, "every" also means "each". It is of some interest to note that the Constitution of Jamaica incorporates similar provisions in one not two sub-sections as may be seen by this extract from section 41 of that Constitution:

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"41.(1) The seat of a member of either House shall become vacant :

- (a) upon the next dissolution of Parliament after he has been appointed or elected,
- (b) if he resigns his seat,
- (c) if he is absent from sittings of the House for such period and in such circumstances as may be prescribed in the Standing Orders of the House

30

I think section 49 requires a more detailed analysis. Even without considering the marginal note "Tenure of office of members", it seems to me that the effect of sub-section (1) is to establish that the tenure of a member who has been elected to the House of Representatives shall be until the next dissolution of Parliament subsequent to his election. Any provision therefore which seeks to reduce that tenure or bring it to a premature end directly affects that tenure and in essence is an alteration of sub-section (1). It is inconceivable that if sub-section (2) had not been

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enacted at the same time and by the same instrument as sub-section (1) its later enactment would not have been held to be an abridgement or alteration of sub-section (1). The failure of the drafters of the Constitution to make specific provision in section 54 for the alteration of sub-section (2) of section 49 is logically explicable on the basis that any addition to the cases in sub-section (2) must inevitably result in an alteration of sub-section (1). The entrenchment of sub-section (1) is a recognition of its substantive nature and its dominant position in the section.

In the Court
of Appeal

No.9
Judgment
Delivered by
P.L.U. Cross
J.A.

29th July 1981

(continued)

In Sajjan Singh v. State of Rajasthan (1965)
A.I.R. at p.846 a majority of the Supreme Court
of India expressed the view that :

"It is well established that in considering the constitutional validity of the impugned Act it would be relevant to inquire what the pith and substance of the impugned Act is."

The Shorter Oxford English Dictionary gives two meanings of the word "vacate" which I consider germane : "to deprive of an occupant or holder" and "to give up possession". It is clear that the pith and substance of the Amendment Act is to add to the list of cases in which a member of the House of Representatives would be deprived of his seat and forced to give up possession thereof before the dissolution of Parliament. Consequently, it is an alteration of section 49(1). I am strengthened in this view by the terms of section 54(6) which defines "alteration" in these words :

"(6) In this section references to the alteration of any of the provisions of this Constitution include references to repealing it, with or without re-enactments thereof or the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith to modifying it and to suspending its operation for any period."

I entertain no doubt that the Amendment Act makes provision for the vacation of his seat by a member other than by the dissolution of Parliament next after his election. It does so "for a particular case" inconsistent with the terms of section 49(1), modifies the sub-section

In the Court
of Appeal

No.9
Judgment
Delivered by
P.L.U.Cross
J.A.

29th July 1981
(continued)

and thereby alters it.

The Amendment Act was not supported in its final vote by the votes of not less than three-fourths of all the members of the House as is required by section 54(3)(b) of the Constitution and is consequently invalid.

The second ground of appeal is that the learned Judge erred in law in holding that the appellant had no locus under section 14 of the Constitution and that the application was misconceived since it was properly one for complaint under section 2 of the Constitution.

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The appellant's application to the High Court was by way of originating motion in purported accordance with the provisions of section 14(1) of the Constitution. The relief sought, inter alia, was "such further or other ancillary relief in accordance with section 14 of the Constitution as may in the premises be appropriate". Section 14 confers on a person who alleges that any of his fundamental rights and freedoms have been infringed the right to apply to the High Court for redress.

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The respondents have contended that section 49(1) confers no right but an obligation and in any case the procedure established by section 14 is expressly made to apply to contraventions of the provisions of Chapter 1. whereas section 49(1) is embodied in Chapter 4.

There is some, but not much, merit in this objection. It overlooks two matters which are relevant. Section 2 of the Constitution enacts that the Constitution is the supreme law of Trinidad and Tobago and any other law inconsistent with the Constitution is void to the extent of the inconsistency. Among the reliefs prayed for in the originating motion is a declaration that the Amendment Act is ultra vires the Constitution, null and void and of no effect. The first sentence of the learned trial judge's judgment states that "the crucial question in this case concerns the constitutional validity of the.....Amendment Act." Certainly the High Court had the jurisdiction to pronounce on the validity of the impugned Act as indeed it did.

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It seems to me the objection is tantamount to a protest that the appellant may be in the right church and the right pew but that he entered by way of the chancel instead of the nave.

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Order 2 of the Rules of the Supreme Court, 1975 was designed to meet just such an irregularity. The "crucial question" has been fully argued before the High Court and before this tribunal. There has been no application to set aside the proceedings for irregularity.

Order 2 rule 3 provides that :

"The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required to be begun by an originating process other than the one employed."

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It is evident from the judgment that the learned judge of first instance did not consider the effect of Order 2 as he should have done. I accordingly do so and hold that the failure to comply with the Rules is a mere irregularity which does not render these proceedings void.

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The appellant is entitled to a declaration that the Amendment Act is null and void and of no effect and I would so declare.

P.L.U. CROSS
Justice of Appeal

In the Court
of Appeal

No.9
Judgment
Delivered by
P.L.U. Cross
J.A.

29th July 1981

(continued)

In the Court
of Appeal

No. 10

No.10
Order

ORDER

29th July 1981

IN THE COURT OF APPEAL

Civil Appeal No.17 of 1979
Action No. 1501 of 1978

IN THE MATTER of the Constitution of the
Republic of Trinidad and Tobago being the
Schedule to the Constitution of the
Republic of Trinidad and Tobago Act No.4
of 1976

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A N D

IN THE MATTER of the Application of Errol
McCleod /sic/ (a person alleging that certain
provisions of Chapter 1 of the said
Constitution have been are being or are
likely to be contravened in relation to him)
for redress in accordance with Section 14
of the said Constitution

Between

ERROL MCCLEOD /sic/ Appellant

20

And

THE ATTORNEY GENERAL First
Respondent

And

ARNOLD THOMASOS,
Speaker of the House of Representatives Second
Respondent

Dated the 29th day of July 1981

Entered the day of January 1982

Before the Honourable Sir Isaac Hyatali, Chief Justice 30

Mr. Justice Clement Phillips
Mr. Justice Maurice Corbin

UPON READING the Notice of Appeal filed on
behalf of the above-named Appellant dated the
26th day of January, 1979.

UPON READING the Record dated herein.

In the Court
of Appeal

AND UPON HEARING Counsel for the Appellant
and Counsel for the Respondents and mature
deliberation thereon had

No.10
Order

29th July 1981

IT IS ORDERED that the Appellant is
entitled to the Declaration that the Amendment
Act is null and void and of no effect.

(continued)

BY THE COURT

Registrar

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No. 11

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No.11
Order granting
Conditional
Leave to appeal
to the Judicial
Committee of
the Privy
Council

Civil Appeal No.17 of 1979

13th October
1981

IN THE MATTER of the Constitution of the
Republic of Trinidad and Tobago being the
Schedule to the Constitution of the
Republic of Trinidad and Tobago Act No.4
of 1976

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A N D

(sic) IN THE MATTER of the Application of ERROL
MC LEOD (a person alleging that certain
provisions of Chapter 1 of the said
Constitution have been are being or are
likely to be contravened in relation to it)
for redress in accordance with Section 14
of the said Constitution have been are
being or are likely to be contravened in
relation to him) for redress in accordance
with Section 14 of the said Constitution

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Between

(sic) ERROL MC LEOD Appellant

And

THE ATTORNEY GENERAL First
OF TRINIDAD AND TOBAGO Respondent

In the Court
of Appeal

And

ARNOLD THOMASOS,
Speaker of the House
of Representatives

Second
Respondent

No.11
Order grant-
ing Conditional
Leave to
appeal to
the Judicial
Committee of
the Privy
Council

13th October
1981

(continued)

Dated the 13th October 1981

Entered the day of January, 1982

Before the Honourable Mr. Justice Cecil Kelsick
Mr. Justice Moor Hassanali
Mr. Justice John Braith-
waite

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UPON the Motion of the above-named Respondent dated the day of August 1981 for leave to appeal to Her Majesty in Council against the judgment of this Court comprising the Honourable Mr. Justice Hyatali, Chief Justice, the Honourable Mr. Cecil Kelsick J.A. and the Honourable Mr. Justice Ulric Cross J.A., delivered herein the 29th day of July 1981.

UPON READING the Affidavit of Yolande Cumberbatch sworn on the 17th day of August 1981 and filed herein.

20

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent THE COURT DOTH ORDER that subject to the performance of the said Respondents of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions, leave to Appeal to Her Majesty in Council against the said judgment of this Court be and the same is hereby granted to the Respondents.

30

AND THE COURT DOTH ORDER that there be no security for costs.

AND THIS COURT DOTH FURTHER ORDER that the Respondents herein do within four months from the date of this Order in due course take out all appointments that may be necessary for settling the Record in such appeal to enable the Registrar of this Court to certify that the said Record has been settled and that the provisions of this order on part of the Respondents have been complied with.

40

AND THE COURT DOTH FURTHER ORDER the Respondents be at liberty to apply at any time within Six (6) months thereafter for final leave to appeal as aforesaid on the production of a Certificate under the hand of the Registrar of this Court of due compliance on their part with the conditions of this order

AND THE COURT DOTH ORDER that the Costs of this application be costs in the cause.

10 AND THE COURT DOTH Grant leave to the Respondents to write up the Order.

In the Court
of Appeal

No.11
Order granting
Conditional
Leave to
appeal to the
Judicial
Committee of the
Privy Council

13th October
1981

(continued)

B. Paray

Asst. Registrar

No. 12

ORDER GRANTING FINAL LEAVE
TO APPEAL TO THE JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL

Civil Appeal No.17 of 1979

No.12
Order granting
Final Leave
to Appeal to
the Judicial
Committee of
the Privy
Council

5th April 1982

20 IN THE MATTER of the Constitution of the Republic of Trinidad and Tobago being the Schedule to the Constitution of the Republic of Trinidad and Tobago Act 4 of 1976

A N D

30 IN THE MATTER of the Application of ERROL MC LEOD (a person alleging that certain provisions of Chapter 1 of the said Constitution have been, are being or are likely to be contravened in relation to it) for redress in accordance with Section 14 of the said Constitution

Between

ERROL MCLEOD

Appellant

And

THE ATTORNEY GENERAL

First
Respondent

In the Court
of Appeal

No.12
Order granting
Final Leave
to Appeal to
the Judicial
Committee of
the Privy
Council
5th April 1982
(continued)

And
ARNOLD THOMASOS, Speaker
of the House of
Representatives
Second
Respondent

Before the Honourable Sir Isaac Hyatali C.J.
Mr.Justice Ulric Cross
J.A.
Mr.Justice Noor Hassanali
J.A.

Dated the 5th day of April, 1982 10

Entered on the day of April, 1982

UPON the Application of THE ATTORNEY
GENERAL and ARNOLD THOMASOS, the first and the
Second named Respondents herein preferred
unto this Court by Motion the 5th day of April
1982, for final leave to Appeal to the
Judicial Committee of the Privy Council against
the Judgment of this Court dated the 29th day
of July, 1981.

AND UPON READING the Notice of Motion and 20
the Order of the Court dated the 13th October,
1981

AND UPON HEARING COUNSEL for the Applicants
and Counsel for the Respondent and upon being
satisfied that the terms and conditions imposed
by the said Order dated the 13th day of
October 1981, have been complied with

THIS COURT DOTH ORDER that FINAL LEAVE be
and the same is hereby granted to the said
Petitioners the Respondents herein to appeal 30
to the Judicial Committee of the Privy Council

BY THE COURT

C. CHAMBERS

Registrar

EXHIBITS

E.M.1

ORDER PAPER TO AFFIDAVIT
OF ERROL MC LEOD

HOUSE OF REPRESENTATIVES OF THE REPUBLIC
OF TRINIDAD AND TOBAGO NOTICE OF THE TWENTY-
FIRST SITTING OF THE 1977-1978 SESSION TO BE
HELD IN THE PARLIAMENT CHAMBER, RED HOUSE,
PORT-OF-SPAIN ON FRIDAY 14TH APRIL, 1978 AT
1.30 P.M.

EXHIBITS

E.M.1

Order Paper
to Affidavit
of Errol
McLeod

28th April 1978

10

O R D E R P A P E R

This is the bundle marked
"E.M.1." referred to in the
Affidavit of Errol McLeod
sworn to before me this 28th
day of April, 1978

S/ O.Best
ex-officio - Commissioner of
affidavits

- 20
- a) Prayers
 - b) Oath of Allegiance of a New Member
 - c) Announcements by the Speaker
 - d) Bills brought from the Senate
 - e) Petitions
 - f) Papers
 - g) Presentation of Reports from Select Committees
 - h) Questions to Minister

Question for Oral Answer:

30

Question No.47 to the Minister of Petroleum
and Mines (By the Member for Oropouche)

Could the Minister of Petroleum and Mines
state whether thorough tests and inspections
are made of Plants and Machinery in the oil
and other heavy industries by Government
officials, to determine the operating
worthiness of such plants and machinery?
Can he state the frequency of such tests and
inspections?

EXHIBITS

E.M.1.

Order Paper
to Affidavit
of Errol
McLeod

28th April
1978

(continued)

Question No.48 to the Minister of Health and
Minister of Local Government

(By the Member for Oropouche)

Could the Minister of Health and Minister of
Local Government state what is being done to
provide roads and proper drainage for the
tenants of Chandroo Lands at the back of Venus
Cinema, bounded by Stella Street and the La
Plaisance Road in La Romain Village?

Question No.49 to the Minister of Education
and Culture

10

(By the Member for Oropouche)

Could the Minister of Education and Culture
state what is being done to provide bus trans-
port for the school children of La Fortune
Woodland Village, Pluck Road, San Francique,
Rambert Village and Hermitage Village?

- i) Requests for leave to move the adjournment
of the House on definite matters of
urgent public importance
- j) Statements by Ministers or Parliamentary
Secretaries
- k) Personal Explanations
- l) Introduction of Bills
- m) Motions relating to the Business or
Sittings of the House and moved by a
Minister or Parliamentary Secretary
- n) Public Business

20

GOVERNMENT BUSINESS

Bills Second Reading:

30

1. A Bill entitled "An Act to amend the
Constitution of the Republic of Trinidad
and Tobago Act, 1976."

(By the Attorney General and Minister for
Legal Affairs).

S/ J.E.Carter
Clerk of the House

House of Representatives
Red House
Port-of-Spain.

40

10th April, 1978.

HOUSE OF REPRESENTATIVES OF THE REPUBLIC
OF TRINIDAD AND TOBAGO SUPPLEMENTAL NOTICE OF
THE TWENTY-FIRST SITTING OF THE 1977-1978
SESSION TO BE HELD IN THE PARLIAMENT CHAMBER,
RED HOUSE, PORT-OF-SPAIN ON FRIDAY 14TH APRIL,
1978 AT 1.30 P.M.

EXHIBITS

E.M.1

Order Paper
to Affidavit
of Errol
McLeod

28th April
1978

(continued)

SUPPLEMENTAL ORDER PAPER

1) Introduction of Bills

10

1. The Constitution of the Republic of
Trinidad and Tobago (Amendment) Bill,
1978.

(By the Attorney General and Minister
for Legal Affairs, who will move that
the next stage of the Bill be taken at
a later stage of the proceedings).

S/ J.E.Carter

Clerk of the House

House of Representatives
Red House
Port-of-Spain.

20

13th April, 1978.

EXHIBITS

E.M.2

"BILL" TO AFFIDAVIT OF
ERROL MC LEOD

EXHIBITS

E.M.2

"Bill" to
Affidavit of
Errol McLeod

28th April
1978

EXPLANATORY NOTE

(These notes form no part of the Bill
but are intended only to indicate its
general purport)

30

This Bill seeks to amend the Constitution of
the Republic of Trinidad and Tobago. It would
make provision to cause a member of the House of
Representatives to vacate his seat if he resigns
from or is expelled by his party and would set
out the procedure for the formal vacating of the
seat of such a member.

This is the bundle marked "E.M.2." referred
to in the affidavit of Errol McLeod sworn
to before me this 28th day of April, 1978.

40

S/ O.Best

Ex-officio - Commissioner of Affidavits

EXHIBITS

A BILL

E.M.2

AN ACT to amend the Constitution of the Republic of Trinidad and Tobago Act, 1976

"Bill" to
Affidavit of
Errol McLeod
28th April
1978
(continued)

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows :-	
Short Title	1. This Act may be cited as the Constitution of the Republic of Trinidad and Tobago (Amendment) Act, 1978.	
Interpre- tation	2. In this Act "the Constitution" means the Constitution set out in the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, 1976.	10
Act No.4 of 1976		
Section 49(2) of Constitu- tion amended	3. Section 49(2) of the Constitution is amended by adding immediately after paragraph (d) the following new paragraph :- "(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party."	20
Constitu- tion Amended	4. The Constitution is amended by inserting immediately after section 49 the following new section :- "Vacation of seat where member resigns or is expelled	
	49A.(1) Where circumstances such as are referred to in section 49 (2)(e) arise, the leader in the House of Representatives of the party as a candidate of which the member was elected, shall so inform the Speaker in writing of those circumstances and the Speaker shall, at the sitting of the House of Representa- tives next after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be.	30 40

(2) Where within a period of fourteen days of the declaration by the Speaker the member does not institute legal proceedings to challenge the allegation that he has resigned or to challenge his expulsion, he shall vacate his seat at the end of the said period of fourteen days.

EXHIBITS

E.M.2

"Bill" to
Affidavit of
Errol McLeod

28th April
1978

(continued)

10

(3) Where within fourteen days of the declaration by the Speaker, the member institutes legal proceedings as aforesaid he shall not vacate his seat unless and until either the proceedings are withdrawn or the proceedings are finally determined by a decision upholding the resignation or expulsion, the decision being one that is not open to appeal or in respect of which time allowed for an appeal has expired without an appeal being filed.

20

(4) From the date of the declaration by the Speaker under subsection (1) the member shall cease to perform his functions as a member of the House of Representatives and he shall resume the performance of such functions only if and when the legal proceedings referred to in subsection (3) are finally determined within the meaning of that subsection in favour of such member.

30

(5) Standing Orders shall make provision for the identification and recognition of the leader in the House of Representatives of every party and for otherwise giving effect to this section."

40

Passed in the House of Representatives this
day of 1978.

Clerk of the House.

2/3

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House was supported by the votes of not less than three-fourths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House.

EXHIBITS

E.M.2

"Bill" to
Affidavit of
Errol McLeod

28th April
1978

(continued)

Passed in the Senate this day of
1978.

Clerk of the Senate.

IT IS HEREBY CERTIFIED that this Act is one the
Bill for which has been passed by the Senate
and at the final vote thereon in the Senate was
supported by the votes of not less than two-
thirds of all the members of the Senate, that is
to say by the votes of Senators.

Clerk of the Senate.

10

E.M.3

Letters from
Labour Party
General
Secretary

24th April
1978 and
12th May 1978

EXHIBITS

E.M.3

LETTERS FROM LABOUR PARTY
GENERAL SECRETARY

UNITED LABOUR FRONT

"LET THOSE WHO LABOUR HOLD
THE REINS"

No.12 Hobson Street,
San Fernando

24th April, 1978

20

Mr. Errol McLeod M.P.,
233 Southern Main Road,
La Romain

Dear Mr. McLeod,

It has been drawn to the attention of the
Party that you have been holding out yourself
in Parliament and elsewhere as representing the
Party without authority.

It has been alleged as follows :-

1. That you are guilty of conduct prejudicial
to the interests of the Party.
2. That by your conduct you have brought the
Party in disrepute.

30

3. That you are guilty of making public statements calculated to make it impossible for the Party to realise its objectives.

In the circumstances, you are requested to attend a sitting of the Disciplinary Committee to answer the charges against you on Tuesday 2nd May, 1978 at 5 p.m. at No.12 Hobson Street, San Fernando.

Yours sincerely,

S/ Kelvin Ramnath
General Secretary

EXHIBITS

E.M.3

Letters from
Labour Party
General
Secretary

24th April
1978 and
12th May 1978

(continued)

10

UNITED LABOUR FRONT

"LET THOSE WHO LABOUR HOLD
THE REINS"

12 Hobson Street,
San Fernando.

12th May, 1978

20

Mr. Errol McLeod,
233 Southern Main Road,
LA ROMAIN

Dear Mr. McLeod,

By letter dated 24th April, 1978, you were summoned to appear before the Disciplinary Committee of the Party on 2nd May 1978, to answer the charges contained in that letter.

30

The Disciplinary Committee reported that you failed to attend the meeting of 2nd May 1978. The Party has decided to give you another opportunity to defend the charges against you, contained in the letter of April 24th, 1978.

You are hereby summoned to appear before the Disciplinary Committee of the Party on Thursday, 25th May, 1978, at 12 Hobson Street, San Fernando, at 5.00 p.m. to answer the charges against you.

Failure to attend this sitting of the Disciplinary Committee could result in the

EXHIBITS

E.M.3

Letters from
Labour Party
General
Secretary

24th April
1978 and
12th May 1978

(continued)

committee dealing with the charges in your
absence.

Yours faithfully,

S/ Kelvin Ramnath
General Secretary

E.M.4

Supplemental
Order Paper
to Affidavit
of Errol
McLeod

30th June
1978

EXHIBITS

E.M.4

SUPPLEMENTAL ORDER PAPER
TO AFFIDAVIT OF ERROL
MC LEOD

10

This is the bundle marked "E.M.4." referred to
in the affidavit of Errol McLeod sworn to
before me this 30th day of June, 1978

S/ Max Lassalle
Commissioner of Affidavits

SUPPLEMENTAL ORDER PAPER

f) Papers

1. Report of the Auditor General on the
Audited Accounts of Trinidad and Tobago
National Petroleum Marketing Company
Limited for the year ended 31st December,
1976.

20

(By the Minister of Finance, who will
move that the Report be referred to the
Public Accounts Committee).

2. Report of the Auditor General on the
Audited Accounts of Point Lisas Industrial
Port Development Corporation Limited for
the year ended 30th June, 1977.

30

(By the Minister of Finance, who will
move that the Report be referred to the
Public Accounts Committee)

3. Report of the Auditor General on the
Audited Accounts of Trinidad and Tobago

Export Credit Insurance Company Limited for the year ended 31st December, 1976. (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

4. Report of the Auditor General on the Audited Accounts of Trinidad and Tobago Oil Company Limited for the year ended 31st December, 1976.

10 (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

5. Report of the Auditor General on the Audited Accounts of the National Gas Company of Trinidad and Tobago Limited for the year ended 31st December, 1976. (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

20 6. Report of the Auditor General on the Audited Accounts of Trinidad and Tobago Development Finance Company Limited for the year ended 31st December, 1976. (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

30 7. Report of the Auditor General on the Accounts of the Trinidad and Tobago Bureau of Standards for the year ended 31st December, 1976. (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

40 8. Report of the Auditor General on the Accounts of the Caribbean Aviation Training Institute for the year ended 31st March, 1977. (By the Minister of Finance, who will move that the Report be referred to the Public Accounts Committee).

9. Annual Report of the Ministry of Health for the year ended 31st day of December, 1976. (By the Minister of Health).

10. Report of the Working Party on Price Control and Duty Free Importation of Building Materials. (By the Minister of Industry and Commerce).

EXHIBITS

E.M.4

Supplemental
Order Paper
to Affidavit
of Errol
McLeod

30th June 1978

(continued)

EXHIBITS

E.M.4

Supplemental
Order Paper
to Affidavit
of Errol
McLeod
30th June
1978

(continued)

n) Public Business

Motions:

PRIVATE BUSINESS

BE IT RESOLVED that the Standing Orders of the House of Representatives be amended in the manner proposed in the Appendix. (By the Attorney General and Minister for Legal Affairs).

S/ J.E.Carter
CLERK OF THE HOUSE

House of Representatives
Red House,
Port-of-Spain

10

1978.

A P P E N D I X

DRAFT AMENDMENT TO STANDING
ORDERS OF THE HOUSE OF
REPRESENTATIVES

Insert immediately after Standing Order 84 the following new Standing Order :-

"RECOGNITION OF LEADERS OF PARTIES IN
THE HOUSE

20

84A. (1) The Speaker shall recognise as Leader in the House of each party represented in the House the Member whose name has been submitted to him as such in writing by the Secretary of each Party.

(2) Where within ten days :-

(a) of the coming into operation of this Standing Order or

(b) of the first sitting of the House after a General Election; or

30

(c) of a vacancy occurring in the Leadership in the House of a party.

the Secretary of any Party or of the party in whose leadership in the House a vacancy has occurred does not inform the Speaker in writing

of the name of the member who is the leader of that party in the House, the Speaker shall require the members of that party in the House to nominate one of their number as leader.

(3) Where during the life of a Parliament there is a change of leadership in the House of a party without that change being preceded by a vacancy in the leadership, the name of the new leader shall be submitted in writing to the Speaker by the outgoing leader."

EXHIBITS

E.M.4

Supplemental
Order Paper
to Affidavit
of Errol
McLeod

30th June
1978

(continued)

10

No.24 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

IN THE MATTER of the Constitution of The
Republic of Trinidad and Tobago

B E T W E E N :

THE ATTORNEY GENERAL First Appellant

- and -

ARNOLD THOMASOS
(Speaker of the House
of Representatives) Second Appellant

- and -

ERROL MC LEOD Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the
Appellants